

**CONFERENCE OF GOVERNMENT EXPERTS ON**  
**the Reaffirmation and Development of**  
**International Humanitarian Law Applicable**  
**in Armed Conflicts**

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**Geneva, 24 May - 12 June 1971**

**III**

**PROTECTION OF THE CIVILIAN POPULATION**  
**AGAINST DANGERS OF HOSTILITIES**

**Submitted by the**  
**International Committee of the Red Cross**



**Geneva**  
**January 1971**

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DOCUMENTARY ANNEX

ABBREVIATIONS

Article 3	Article 3 common to the four Geneva Conventions of August 12, 1949.
CCD	Committee of the Conference on Disarmament.
Commentary on the 1956 Draft Rules	Commentary on the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War. Geneva, 1956.
Conv.	Convention.
Cultural Property Conv. 1954	The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (UN Treaty Series, vol. 249 (1956) No. 3511).
Document I	Introduction (CE/1)
Document II	Measures intended to reinforce the implementation of the existing law (CE/2).
Document III	Protection of the civilian population against the dangers of hostilities (CE/3).
Document IV	Rules relative to behaviour of combatants (CE/4).
Document V	Protection of victims of non-international armed conflict (CE/5).
Document VI	Rules applicable in guerrilla warfare (CE/6).
Document VII	Protection of the wounded and sick (CE/7).
Document VIII	Annexes (CE/8).

Draft Rules, 1956	Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War, Geneva, 1956.
Ist Geneva Conv. 1949	Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field of August 12, 1949.
IIInd Geneva Conv. 1949	Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949.
IIIrd Geneva Conv. 1949	Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.
IVth Geneva Conv. 1949	Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.
Geneva Protocol, 1925	Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, signed in Geneva on 17 June 1925.
IVth Hague Conv. Regulations, 1907	Annex to the IVth Hague Convention of 1907 : Regulations respecting the Laws and Customs of War on Land.
IXth Hague Conv. 1907	The IXth Hague Convention of October 18, 1907 respecting Bombardments by Naval Forces in Time of War (Second International Peace Conference, The Hague, 1907).
ICRC	International Committee of the Red Cross.

ICRC Report on  
Reaffirmation

Report on the Reaffirmation and  
Development of the Laws and  
Customs Applicable in Armed Con-  
flicts, submitted by the ICRC to  
the XXIst International Conference  
of the Red Cross, Istanbul,  
September 1969; Geneva, May 1969.

LoN

League of Nations.

Para.

Paragraph.

Resolutions :

Resolution of the  
Institute of Inter-  
national Law

Resolution adopted by the Edin-  
burgh meeting of the Institute of  
International Law, 4-13 September  
1969, concerning in general the  
distinction between military  
objectives and non-military objects  
and in particular the problems  
posed by the existence of weapons  
of mass destruction.

Red Cross

Istanbul res. XIV

XXIst International Conference of  
the Red Cross, Istanbul, 1969;  
resolution XIV on Weapons of Mass  
Destruction.

Istanbul res. XV

XXIst International Conference of  
the Red Cross, Istanbul, 1969;  
resolution XV on Status of Civil  
Defence Service Personnel.

Istanbul res. XXVI

XXIst International Conference of  
the Red Cross, Istanbul, 1969;  
resolution XXVI "Declaration of  
Principles for International  
Humanitarian Relief to the Civilian  
Population in Disaster Situations".

Vienna res. XXVIII

XXth International Conference of  
the Red Cross, Vienna, 1965;  
resolution XXVIII on Protection  
of Civilian Populations against  
the Dangers of Indiscriminate  
Warfare.

## VII

Vienna res. XXIX                      XXth International Conference of  
the Red Cross, Vienna, 1965;  
resolution XXIX on Personnel of  
Civil Defence Services.

### UN

Resolution 2444 (XXIII)              A/Res/2444 : "Respect for human  
rights in armed conflicts", 13  
Jan. 1969.

Resolution 2603 (XXIV)              A/Res/2603 : "Question of chemical  
and bacteriological (biological)  
weapons", 21 Jan. 1970.

Resolution 2675 (XXV)              A/Res/2675 : "Basic principles for  
the protection of civilian popu-  
lations in armed conflicts", 4  
Jan. 1971.

St. Petersburg  
Declaration, 1868                      Declaration of St. Petersburg of  
1868, (29 November - 11 December  
1868) to the Effect of Prohibit-  
ing the Use of certain Projectiles  
in Wartime.

Secretary-General's  
Report A/7720                          Report of the UN Secretary-General  
on respect of human rights in time  
of armed conflicts; A/7720 - 20  
November 1969.

Secretary-General's  
Report A/8052                          Report of the UN Secretary-General  
on respect of human rights in time  
of armed conflicts; A/8052 - 18  
September 1970.

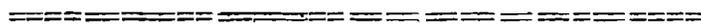
UN

United Nations Organization

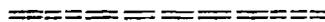
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P A R T O N E

PROTECTION OF THE CIVILIAN POPULATION



IN ARMED CONFLICT



TITLE IINTRODUCTION

## Chapter 1

History

It is worthwhile giving here a brief summary of the evolution of the efforts made by the Red Cross to assure the protection of the civilian population against the dangers resulting from military operations.

The Red Cross, born on a battlefield, was mainly concerned, at the start of its history, with caring for the sick and wounded because at that time, the civilian population was not subjected to the suffering that it has known in modern armed conflicts. Nevertheless, following a development due mainly to improved artillery and aviation, particularly during the first world war, situations in which civilians found themselves equally as exposed to dangers, if not more so, than combatants, became more and more frequent. Whilst registering its opposition to the very nature of war, the Red Cross was called upon to work on behalf of fresh victims; it was then that the Red Cross made efforts to limit disastrous effects of armed conflicts and to obtain the reinforcement of legal protection of persons not participating in military operations.

The efforts of the International Committee of the Red Cross (ICRC) in the field of the safeguarding of the civilian population go back a long way; in 1920 it proposed to the General Assembly of the League of Nations that it take different measures, such as the limitation of aerial warfare to exclusively military objectives, the absolute prohibition of the use of asphyxiating gases and the prohibition of the bombardment of "open towns", or undefended ones.

Besides these efforts, which were in vain in the case of aerial bombardments, the ICRC, following the second world war, started to prepare the legal texts which became, in 1949, the four Geneva Conventions : the most recent and complete codification of rules designed to protect human beings involved in armed conflicts. Nevertheless, the Fourth of these Conventions, completely new and very necessary after the suffering inflicted upon the civilian population during the last terrible war, only protects this population against the abuse of power by the enemy authorities. It only deals to a limited extent with the very troublesome problem of their protection against the dangers resulting from military operations. In this field, conventional rules dated mostly from 1907 : for some they are not adapted to conditions of modern armed conflicts and they were, unfortunately, gravely violated during the second world war, as during more recent conflicts.

The ICRC, having recourse to earlier studies, also drew up "Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War", (Geneva 1965, see Annex XIX) reaffirming certain norms of law in force and presenting some concrete solutions to this major problem.

This Draft was submitted to the XIXth International Red Cross Conference (New Delhi, 1957) which approved the aim but, on the governmental level, it was not implemented. However, on the moral level, many authors warmly welcomed this document since, by maintaining the distinction between persons participating in military operations and those belonging to the civilian population and by stressing the limitations which must be placed on attacks, it was fighting against the conception - to which practice could have given birth - that indiscriminate attacks and bombardments would be in conformity with international law.

Continuing its efforts in another form, the ICRC submitted to the XXth International Conference of the Red Cross (Vienna, 1965) the idea of reaffirming certain principles of protection which were essential. Affirmed by resolution XXVIII of this Conference (see Annex XII), these principles were reaffirmed by resolution 2444 (XXIII) of the General Assembly of the United Nations of 19 December 1968 (see Annex IX). These two resolutions gave the first official affirmation of the ICRC's efforts over many years :

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as long as armed conflicts exist, the respect for the civilian population and the distinction between persons participating in military operations and those belonging to the civilian population, is essential if human values are to be safeguarded and a return to peace facilitated.

Since then, the international community has shown an increasing interest in problems of international humanitarian law in general and in those concerning the civilian population in particular. The Secretary-General of the United Nations had to devote a large amount of space to them in his two reports "Respect for human rights in armed conflicts" (A/7720, paras. 133 to 155; A/8052, paras. 30 to 87). In his second report, in particular, the Secretary-General proposes a certain number of minimum rules which are derived from the Draft Rules of 1956 and the work of the Institute of International Law and, moreover, contain new principles.

During the XXVth General Assembly of the United Nations, which had to examine the above-mentioned reports by the Secretary-General, a very important resolution was adopted - from which quotations will often be made - and entitled "Basic principles for the protection of civilian populations in armed conflicts" (2675 (XXV), see Annex XI). This resolution enabled the ICRC to define better the concrete proposals drawn up following the consultation of the experts, which took place in the summer of 1970.

Since August 1970, the ICRC has questioned more than thirty experts representing the main legal and social systems in the world, in accordance with resolution XIII of the XXIst International Conference of the Red Cross (Istanbul, 1969); the list of personalities consulted and all other information will be found in greater detail in Document No. 1 : "General Introduction". These experts received a questionnaire on the protection of the civilian population against dangers resulting from hostilities (D 1157).

Furthermore, the work of the Institute of International Law, which held its last session in Edinburgh in September 1969, proved itself to have been of inestimable value and reference will be made to resolution No. 1 which

was then adopted, entitled : "The distinction between military objectives and non-military objects in general and the problems raised by the existence of weapons of mass destruction, in particular" (see Annex XXIV).

## Chapter 2

Economy of the document

There will be no recapitulation here of the considerations common to all the documents, particular those relating to the subsequent linking of draft protocols to legal instruments in force, to weapons, etc., since they have already been dealt with in the general introduction (see document No. 1). Before giving a survey of the four first parts, it should be noted that the present document is composed of two parts (I. Protection of the civilian population in armed conflicts and II. Strengthening of the guarantees afforded by international humanitarian law for non-military civil defence organizations) which have been separated for two reasons : firstly, the question of civil defence bodies sometimes covers highly technical aspects and secondly, since it belongs to the conference of experts to pass judgement on this subject, it is not yet possible to know if the draft rules relating to civil defence bodies would be attached to those which have been proposed for the civilian population, or to Art. 63 of the Fourth Geneva Convention of 1949.

The two first titles of Part I constitute the essential core of the document, because the main problems are described therein. Under "general questions relating to the protection of the civilian population in armed conflicts" (Title II), the distinction, the definition and the protection of the civilian population, then the same problems relating to non-military objects, finally the precautions that the Parties to the conflict must take so as to spare the civilian population and objects designed for its use, will be successively examined. It is during the course of these seven chapters that the concrete proposals will be formulated, most of them in the form of draft basic rules. In the "special questions relating to the protection of the civilian population in armed conflicts" (Title III), several more technical problems - sometimes very important ones will be dealt with - and proposals - which are rarer - formulated in this Part are

intended only to supplement the earlier ones. At the end of Title III, Chapter 6, some problems of procedure will be raised briefly, since, at the present stage, it would be premature to devote too much attention to them.

Finally, in Title IV, will be given the elements of a "draft protocol on the protection of the civilian population in armed conflicts", in which the basic rules previously formulated will be set out, although these do not represent all the concrete proposals. These latter are systematically given for each Title, at the end of the chapters or sub-chapters and are followed by a commentary.

Remarks on the draft protocol relating to the protection  
of the civilian population in armed conflict

The majority of the proposals formulated in the first part of this document, that is, those known as the "basic rules", might be inserted in a protocol relating to the protection of the civilian population in armed conflicts. To simplify matters, the term "draft" protocol will be used throughout the length of Part I, since, for the moment there is only an ensemble of elements (the "basic rules") which could be included, even without any modification, in a draft protocol.

Since the studies relating to international humanitarian law are not always at the same stage of advancement - and this is also true for certain problems in the field of the protection of the civilian population - considerations of form and procedure outlines here will only have a value as temporary indications, to which not too much importance should be attached.

This protocol would comprise a preamble, about fifteen basic rules, a regulation of execution (in two parts), perhaps with annexes.

Only the basic rules have been developed up to now in the work relating to the protection of the civilian population. The ICRC has awarded them priority for two different reasons : firstly, the ICRC's own work in this field was already well advanced and it was able to profit from the "experience" gained from the Draft Rules of 1956; secondly, the resolutions and work undertaken by the United Nations and the Institute of International Law affirm a number of principles, of which the common features, advantage, developments and precise formulations permitted

by them could be examined; thirdly, all the experts consulted in 1970 felt that it was necessary, as a first phase, to affirm the more essential principles then, as a second phase and in the supposition that the essential principles would be approved, formulate the principles of application which would be both more precise and more numerous. With respect to the regulations of execution, it would contain precisely these rules of application which will only be established later on; only a few ideas have been outlined in this connection and in regard to limited questions. It has been planned that it will be composed of two parts, one made up of the general rules of application, the other of the rules of application relating to armed conflicts of an international character.

\* \* \*

To conclude this general introduction, three remarks should be made :

- The ICRC feels that, in principle, the protection due to the civilian population against the dangers of military operations should be the same in all situations and in all types of armed conflict. This is why no attempt has been made, either in the questionnaire addressed to the experts in 1970, or in the first part of this document, to draw any distinction. This attitude has been approved by the experts as a whole and corresponds, moreover, to the tendency in the international resolutions often mentioned, which, in this field, contain valid principles for all armed conflicts, such as the resolution of the XXVth General Assembly "Basic principles for the protection of civilian populations in armed conflicts", 2675 (XXV) (see Annex XI). The question of the civilian population will also be dealt with in other documents ("Rules applicable to guerrilla warfare", No. 6, "Protection of victims of non-international armed conflicts", No. V); the considerations and propositions set out in this Part obviously hold good for the situations and circumstances described therein.

- In the questionnaire sent to the experts in 1970, as in the first Part of this document, it is the protection of the civilian population against the dangers resulting from military operations which is investigated and not protection against the dangers resulting from arbitrary action taken by the enemy who finds himself in a position of power - a question already dealt with by the Fourth Geneva Convention of 1949.

- Since the governments have not followed up on them, the ICRC has declined to take up the Draft Rules of 1956 again, at least for the moment. Nevertheless, given the welcome they received in principle and the importance that they retain, some of the solutions contained therein have been quoted.



TITLE TWOGENERAL QUESTIONS ON THE PROTECTION OF THE  
CIVILIAN POPULATION IN ARMED CONFLICT

## Chapter 1

The distinction between the civilian population and  
military objectives1) Preliminary remarks

All humanitarian international law is founded on a basic distinction between what, for the sake of convenience, can be called "civilian elements" and "military elements". Firstly, the "civilian elements" are taken to mean persons; that is to say, the civilian population whose protection it is desired to reaffirm and develop. Secondly, the term refers to non-military objects designed to serve this civilian population. In the same way, "military elements" are constituted by persons and objects which are generally described by the term "military objectives".

The problem of the protection of the civilian population can be approached from two different standpoints. From the humanitarian standpoint, it must be considered how the Parties in the conflict, who do not have an unlimited right to adopt means of injuring the enemy can leave the civilian population outside the sphere of the effects of military operations. From the military standpoint, it is more a question of how the Parties can concentrate their operations on the destruction of the enemy military resources. Thus, as far as the Red Cross

is concerned, it is mainly the notions of the civilian population and non-military objects which must be seek in order to attempt to establish a few basic rules of protection for the benefit of the civilian population. This will also lead to the examination of the notion of military objectives, on the subject of which it is noted that there is an absence of precision and unanimity liable to bring about, in practice, serious abuses from which the civilian population suffers.

The ICRC's approach consists, mainly, of defining illicit objectives 1/. The civilian population is the main concern of the ICRC, whereas non-military objects are only of interest to it when they have a relationship with the civilian population in one way or another.

## 2) Distinction and definition

Before turning attention to the possibility and opportuneness of defining what constitutes the civilian population, it would be preferable to examine the distinction between "civil elements" and "military elements" made above.

This approach has two reasons behind it : on one hand, in the history of humanitarian international law, this distinction has appeared and has been specified firstly, whereas, up to the present, the definition of the civilian population in existing instruments on international law has been avoided; on the other hand, attempts of the publicists in this respect have, indeed, often been based on the distinction itself.

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1/ "Illicit objectives" are those which it is forbidden to attack, whereas "licit objectives" are those which it is permitted to attack (military objectives); in both cases, the terms cover both persons and objects.

3) The value of the principle of the distinction from the governmental point of view

The distinction was implicitly included in the Declaration of St. Petersburg of 1868, in preambular paragraph 2 : "The only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy" (see Annex I).

The distinction is one of fundamental importance, not only with regard to the civilian population, but also with regard to the employment of arms. Indeed, as Prof. D. Bindschedler's report submitted to the Carnegie Foundation Conference on the Reconsideration of the Law of Armed Conflicts correctly points out :

"The relation between the question of the distinction between licit and illicit objectives and the question of licit and illicit arms and methods of warfare, is fairly obvious. When the Hague Regulations affirm in Article 22 that "the right of belligerents to adopt means of injuring the enemy is not unlimited", they also affirm a limitation with respect to methods and arms as well as to objectives, the destruction of this or that objective being in itself "a means of injuring the enemy" 2/.

Although certain methods employed during the second world war have led publicists to question the validity of this distinction, it does not appear to be any the less well established. This is clearly visible from military manuals, which make the distinction between military objectives and non-military objects 3/, as well as from manifestations of the will of States as expressed in votes on relevant declarations, either within the United Nations Organization or within International Red Cross Conferences.

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2/ Report by the Carnegie Foundation on the Reconsidération du Droit des conflits armés - Geneva, September 1969, Page 25, translation.

3/ See, for instance, the Manual of Laws and Customs of War of the Swiss Army, Paras. 25 and 26, as well as the examples given by Prof. D. Bindschedler, op. cit., p. 31 et seq.

Among these resolutions, special mention must be made of resolution XXVIII of the XXth International Conference of the Red Cross held at Vienna : "Protection of Civilian Populations against the Dangers of Indiscriminate Warfare" (see Annex XII), the third principle of which provides :

"... that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible ..."

It should also be noted that this principle, like the two which precede it, has been included in its entirety in the United Nations resolution No. 2444 (XXIII) "Respect for human rights in armed conflicts" of 19 December 1968 (see Annex IX). Similarly, the recent resolution No. 2675 (XXV) on "basic principles for the protection of civilian populations in armed conflicts" stipulates in its substantive paragraph 2 :

"In the conduct of military operations in armed conflicts, a distinction must be made at all times between persons actively taking part in the hostilities and civilian populations ..."

Although these are only resolutions, the unanimous support which they have received shows that it is an expression of the opinio juris of the international community.

Moreover, in armed conflicts which have occurred since the second world war, and on many occasions, the belligerents have publicly denied having attacked anything other than military objectives.

4) The value of the principle of the distinction from the point of view of publicists and the opinions of experts

It will be sufficient, at this point, to quote a few important texts. The Draft Rules for the limitation of the dangers incurred by the civilian population in time of war (hereinafter referred to as the "Draft Rules") stipulates in its first Article (see Annex XIX):

"Since the right of Parties to the conflict to adopt means of injuring the enemy is not unlimited, they shall confine their operations to the destruction of his military resources and leave the civilian population outside the sphere of armed attacks".

The resolution of the Institute of International Law, at its session in Edinburgh in September 1969 (hereinafter referred to as the resolution of the Institute of International Law), stipulated under Art. 1 :

"The obligation to respect the distinction between military objectives and non-military objects, as well as between persons participating in the hostilities and members of the civilian population remains a fundamental principle of international law in force" 4/.

In his first report "Respect for Human Rights in Armed Conflicts" (A/7720), the Secretary-General of the United Nations wrote in para. 140 :

"The distinction between military objectives, considered as legitimate, and non-military objectives, considered as illegitimate, continues to be the criterion used by some experts for judging whether a certain military operation is, or is not, in conformity with the laws and customs of armed conflicts."

#### Opinions of experts consulted by the ICRC

Almost all the experts consulted by the ICRC, both in February 1969 and during 1970, recommended that the distinction between "civil elements" (illicit objectives) and "military elements" (licit objectives) be maintained. With regard to the civilian population, all experts considered it opportune to include the principles applicable in armed conflicts as expressed in the abovementioned international resolutions, and particularly that of the

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4/ Annuaire de l'Institut de Droit international, 53e volume, session d'Edimbourg, septembre 1969, Vol. II, p. 48 - 126.

distinction itself, in a proper legal instrument.

### ICRC Proposal

The ICRC feels that the principle of the distinction should appear in the draft protocol on the protection of the civilian population in armed conflicts as one of the basic rules applicable to all armed conflicts. For the sake of convenience in setting out this text, this proposal will be formulated in the next chapter, together with that concerning the definition of the civilian population, since both matters are closely linked.

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## Chapter 2

Definition of the civilian population1) General remarks

As has already been observed, there is no definition of the civilian population contained in instruments of international law in force. On the other hand, the notion of civilian population - an unspecified one - has been alluded to many times, for instance, in the wording of the principle of the distinction which appears in the above-mentioned international resolutions. One, therefore, takes a point of departure from the premise that there is such a notion of the civilian population, when in fact there is not. Consequently, the ICRC has not failed to consult experts on this question and they have put forward a series of suggestions concerning a definition.

Although a minority of these experts have hesitated, or declined, to develop the idea of a definition - superfluous in their eyes - the majority have insisted on the need for a balanced definition which would clearly specify the rights and duties of civilians. It would permit the brake to be applied to the arbitrariness which is all too frequently manifest in the practice of armed conflicts, and which directly affects the civilian population. In order to achieve this, the experts recommended various methods.

2) Global or special definition

Some felt that the civilian population, taken as a whole, cannot be defined as such in a precise legal instrument and that, consequently, one must restrict

oneself to defining certain categories or groups of individuals which necessarily form part of the civilian population 5/. Others believed that only the civilian population considered as an entity can lend itself to a definition which is unanimously and universally acceptable and valid in all situations and types of armed conflicts. They pointed out that the categories of persons who make up the civilian population may change their very nature according to the particular cases 6/. Finally, still other experts thought that the two methods may be juxtaposed and complement each other without creating any difficulty.

In this connexion, it would be well to recall that the Draft Rules take account of the two methods, namely in Arts. 4 and 12, although the stress is laid on a global definition 7/. These ideas are, moreover, contained in the Secretary-General's second report 8/. It is also significant that although the resolution of the Institute of International Law attempts to define

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5/ one speaks of the macro-analytical definition when referring to the civilian population as a whole and of the micro-analytical definition when referring to a specific category of the civilian population.

6/ For example, the police do not always fill the same role in armed conflicts of an international character that they do in those of a non-international one.

7/ "For the purpose of the present rules, the civilian population consists of all persons not belonging to one or other of the following categories :

- a) Members of the armed forces, or of their auxiliary or complementary organizations.
- b) Persons who do not belong to the forces referred to above, but nevertheless take part in the fighting."

(Draft Rules, Art. 4)

8/ Report by the Secretary-General A/8052, para. 39.

non-military objects under Art. 3 (see Annex XXIV), it omits to do so with respect to the civilian population. The discussions indicate rather a global approach, both for the civilian population and for civilians taken without distinction 9/.

### 3) Positive or negative definition

Among those in favour of a definition, there is only a small number who supported a positive definition of the civilian population considered as an entity. On the other hand, there are several who supported the idea of specific positive definitions for certain groups or categories of the civilian population 10/. Furthermore, none of the experts in favour of a positive global definition has submitted a precise solution.

The majority of experts have, therefore, preferred to decline formulating a positive definition, and this for two reasons : it would tend to ignore or neglect important categories of the civilian population and, above all, it would create the grave danger of giving the impression that the categories not mentioned are considered - a contrario - as being licit personal objectives. The general trend consists in starting with the category of persons considered as military objectives in order to admit that all persons who are not members of the armed forces or who do not fill a military role should belong to the civilian population in accordance with the adopted criterion, based on the status of civilians or on their functions in military operations 11/. This approach, of a negative definition, is more

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9/ See particularly the Annuaire de l'Institut de Droit international, 53e livre, Vol. II, p. 58, paras. 2 p. 59, 4,6 and 7, p. 60, Para. 1 and p. 71, para. 1.

10/ The definition of these categories or groups being closely linked to special protection, it has been decided to devote Chapter 3, Fig. 3 to them.

11/ See below, Fig. 4.

favourable to the civilian population but it obviously involves the inconvenience of raising the problem of persons considered as being military objectives 12/.

4) Definition according to the status of civilians or according to their functions in military operations..

- a. The status of civilians chosen to distinguish "civil elements" (illicit objectives) from "military elements" (licit objectives), is the criterion which, historically speaking, was the first to be adopted. This would seem logical because it conformed to conceptions generally held around the turn of this century and according to which only members of the armed forces had the right to attack or resist the enemy, together with, under certain conditions specifically enumerated in Arts. 1 and 2 of the 1907 Hague Convention (see Annex III), militia and volunteer corps and the population of an unoccupied territory which spontaneously takes up arms.

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12/

The Draft Rules, in Art. 4 a) mentions simply the "personal elements" or categories of persons who are, in fact, so-called personal military objectives. In the Commentary on the Draft Rules (pages 48 - 50 in the English text) there is an outline of the difficulties which would be encountered if it were desired to include these notions, whilst specifying them, of personal military elements in international law, in a uniform manner. The resolution of the Institute of International Law gives a general definition of military objectives, which has been enshrined in Art. 7 of the Draft Rules, but which does not make a specific distinction between personal military objectives and material military objectives (see Annex XXIV). Several authors of the "remarks concerning the Draft of 1955" would have wished that the definition of civilian population was more in harmony with Art. 4 of the Third Geneva Convention. The Commentary on the Draft Rules recalls that this last provision is not aimed at persons against whom it is permitted to commit acts of war, but at those who benefit from the status of prisoner of war, should they fall into the hands of the enemy, which is quite different.

The wider scope that the notion of combatant has taken on since then is well known 13/ and it has become even more enlarged since the second world war, creating in turn the need for a wider definition of the combatant with all the consequences that this entails for the notion of civilian population. Thus, the Hague Convention of 1907 does not solve the problem of combatants who are not covered by the terms of the above-mentioned articles, nor the problem - also of recent date - of those who are termed - erroneously - "quasi-combatants" 14/; that is, civilians who carry out activities considered to be highly useful for purposes of defence or attack 15/. The plight of these latter is often so much more precarious that they are confused, whether intentionally or not, with combatants known as "irregulars" 16/. Thus, it was necessary to find a fresh criterion, better suited to current armed conflicts.

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13/ See Document VI, II Combatants.

14/ The expression "quasi-combatants" is a contradiction in terms, since it refers to persons who are not, or should not be, considered as being military objectives; in this Document, one has preferred to describe such persons by the periphrase "civilian linked to the military effort".

15/ This word "attack" is used here in its purely military and technical sense; it means acts of violence perpetrated against the adversary, either defensively or offensively, whatever may be the means or arms employed.

16/ The expression "irregular combatants" has been also replaced by that of "combatants not fulfilling the conditions" (sous-entendu of Art. 4 of the Third Geneva Convention of 1949). (See Document VI, II Combatants).

Provisionally, the criteria adopted here for distinguishing between "civilians linked to the military effort" and "combatants not fulfilling the conditions" shall be the direct participation in operations of a military character or the carrying of arms, in the case of the latter, and the non-direct participation and absence of arms, in the case of the former.

b. The function of persons in military operations

This is the criterion which shall be provisionally named the participation or non-participation in military operations. It was included for the first time in international law in force, under Art. 3 of each of the four Geneva Conventions of 1949, which provides that:

"Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely ..."

Unfortunately, the Acts of the Diplomatic Conference of 1949 do not indicate what one can or should understand by the terms "taking part", "actively" or "hostilities", to which one shall return subsequently. Since then, resolutions and work of various origins and scope have embraced the criterion of function, but with a goodly number of "nuances". They will be referred to in chronological order.

Thus, the Draft Rules, in Art. 4, b. already mentioned, speaks of "Persons who ... take part in the fighting". As is mentioned in the Commentary on the Draft Rules, this sub-paragraph b. concerns, firstly, a "levy en masse" and, secondly, "Unorganized partisans" 17/, but not "civilians linked to the military effort", such as workers and scientists (the former working in war industries and the latter in institutions charged with fulfilling experiments for military purposes, for instance). There follows a passage from the Commentary on the Draft Rules on this subject :

"The conception of the definition of the civilian population adopted by the ICRC may raise certain difficulties. For how are civilians in some cases to be distinguished from persons accorded temporary military status ? The definition may also lead to abuses, for attempts will be made to palm off military personnel as civilians. But these are

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17/ See Commentary on the Draft Rules, Art. 4 (see Annex XIX bis).

minor drawbacks compared with the danger of excluding the above categories from the civilian population. For that would amount to breaching the last defences against the flood of total war. Lastly, to take a long-term view, how can we afford to neglect the extremely important fact that attacks on categories of persons who, however doubtful this may appear to the enemy, are considered by popular sentiment in their own country as beyond any question forming part of the civilian population, may leave lasting psychological scars and fan resentment and hatred from which new conflicts will spring."

It must be recognized that the terminology used under b. in the Draft Rules, particularly the word "fighting", which is somewhat imprecise, was not satisfactory because it is ambiguous and could create difficulties of interpretation. Further, these terms were not used in this form in the following texts. Rather, reference was made to the terms used in Art. 3, by taking up the ideas of "taking part" and "hostilities" and in abandoning that of "actively". This was the wording of resolution XXVIII in Vienna and of the texts directly derived from it : resolution 2444 (XXIII) and the resolution of the Institute of International Law (see Annexes XII, IX and XXIV). In this connection, one notes a certain hesitation of a terminological nature in the latter resolutions of the XXVth General Assembly of the United Nations, a hesitation which could have very important consequences 18/.

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18/ Resolution 2673 (XXV) "Protection of journalists on dangerous missions in areas of armed conflict", stipulates under preambular para. 2: "Recalling, on the other hand, the basic principle according to which a distinction must be made at all times between combatants and persons who do not take part in the hostilities ...", whereas resolution 2675 (XXV) (see Annex XI) stipulates in its second substantive para. : "In the conduct of military operations during armed conflicts, a distinction must be made at all times between persons actively taking part in the hostilities and civilian populations". There is more than a difference of "nuance" between the terms "directly" and "actively". The word "actively" probably derives from the English text of Art. 3 of the four Geneva Conventions; the term used in French - in the Art. 3 but not in the resolution 2675 (XXV) - directement

There has as yet been no attempt to resolve satisfactory the problem of the duties of civilians; there is often some confusion about this and the question will be dealt with further on 19/.

### ICRC concrete proposal

#### A. The Principle of the Distinction 20/

The ICRC, in agreement with the opinion of the experts that it is both advisable and necessary to include the principle of the distinction in an effective legal instrument, proposes to insert the following provision in the basic rules of the draft protocol on the protection of the civilian population in armed conflicts:

"In the conduct of military operations, a distinction must be made at all times between, on the one hand, persons who directly participate in military

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#### 18/ suite :

(in Spanish directamente and in Russian nieposredstvenno, corresponding to the French meaning), was always employed during the preparatory work of the Geneva Conventions. In the opinion of the ICRC, the idea contained in the word "directly" is more appropriate because it is more precise and expresses just as well the generally accepted opinion that civilians have not only rights, but duties as well. In the recent draft resolutions and work mentioned above, it was proposed to introduce this factor of duties of civilians through different qualificatives: in good faith, peaceful, innocent or non-combatant. Fortunately, these very imprecise and subjective qualificatives were abandoned (see below, commentary, on sub-paragraph B.).

19/ See below, commentary, on sub-paragraph B., as well as in Chap. 3, Fig. 2.

20/ See above, Chap. 1.

operations and, on the other hand, persons who belong to the civilian population, to the effect that the latter be spared as much as possible".

### Commentary

This project has been largely inspired by the texts of the above-mentioned international resolutions, but it is, however, adapted to the definition of the civilian population given below. The mention of "persons who directly participate in military operations" embraces both members of the armed forces and organizations attached to them and combatants not fulfilling the conditions of Art. 4 of the Third Geneva Convention of 1949 21/.

The expression "to the effect that the latter be spared", indicates the chief object and concern of humanitarian international law. On the other hand, the words "as much as possible", are a concession to the principle of military necessity, a concession which seemed to the experts to be both realistic and inevitable. This conception is not without influence on the general protection to be given to the civilian population, as will be seen in the next chapter.

### B. Definition of the Civilian Population

The ICRC, in agreement with the opinion of the majority of the experts consulted, considers it essential to propose a definition of the civilian population for inclusion in the basic rules of the draft protocol on the protection of the civilian population in armed conflict, since the absence of any specific norm on this question has already had a too harmful effect on the civilian population during the course of the events which

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21/ See above - under Fig. 4 a., footnote 12/ and Document VI, II Combatants.

have occurred during this century. Such an intention may seem ambitious and is liable to run up against various obstacles. That is why the ICRC is putting forward an alternative proposal for a definition of the civilian population.

#### First proposal

"The civilian persons constitute the civilian population. Civilians are those persons who do not form part of the armed forces, nor of organizations attached to them or who do not directly participate in military operations (or: in operations of a military character). The above-mentioned persons whose activities contribute directly to the military effort do not, for that reason, lose their status of civilians".

#### Second Proposal

"Persons who do not form part of the armed forces, nor of organizations attached to them or who do not directly participate in military operations (or: in operations of a military character), are civilians and, as such, they constitute the civilian population."

#### Commentary

With respect of these two definitions explained by the considerations given above, the following clarifications are necessary : the two proposals contain the same ideas; the only difference lies in the fact that the former deals explicitly with "civilians linked to the military effort" who must be considered as civilians, whereas the second proposal refers to them implicitly (a "sous-entendu") through its interpretation a contrario. It will be sufficient to analyse three important notions: "organizations attached to the armed forces", "military operations" and "directly".

a) Organizations attached to the armed forces

This term replaces those of "auxiliary or complementary organizations of the armed forces", which the Draft Rules had adopted. The adjunction of these terms shows that the conception of the "armed forces" is understood in a broad sense.

- b) The expression "military operations" (or: operations of a military character) has replaced the old term "hostilities" for two reasons: firstly, the term "hostilities" may, at present, have too broad a meaning, covering a whole series of acts and circumstances in which civilians are directly involved; secondly, the term "military operations" can be applied to all situations and to all types of armed conflict, as resolution 2675 (XXV) partially indicates, moreover, and where one finds the term mentioned five times, in substantive paragraphs 2,3,4,5 and 6 (see Annex XII) 22/. On the other hand, the term "military effort" does not have at all the same meaning and covers all the activities of civilians ("civilians linked to the military effort") who are objectively useful in defence or attack in the military sense, without being the direct

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22/ It should be noted that in the Russian text of Art. 3, the words: v voennykh deistviakh are much more precise than in the two other languages; they are already closer to the idea of operations of a military character.

The term "armed operations", sometimes used during discussions, were not thought to be appropriate : firstly, there can be an armed operation outside any armed conflict (for example, a police operation on a large scale of which the object is the apprehension of a band of lawbreakers) and, secondly, there can be military operations that do not necessarily entail the use of arms (examples : military exploration and reconnaissance).

cause of damage inflicted on the adversary, on the military level 23/.

c) The word "directly" 24/

This word has the essential merit of drawing the distinction - and how difficult it is ! - between combatants who do not fulfil the conditions and civilians linked to the military effort; it includes persons linked to the military effort within the civilian population and combatants who do not fulfil the conditions within military objectives 25/. Indeed, "directly" establishes the relationship of "adequate causality" between the act of participation and its immediate result in military operations. According to this theory of "adequate causality", a person is only a "combatant" - and thus a possible military objective - to the extent that his act, or activity, is a direct cause of damage inflicted on the adversary, on the military level; that is to say, when his act or activity is such as to cause damage of this nature in the ordinary course of events and according to experience of armed conflicts.

Conversely, a person remains a civilian as long as his act or activity is not responsible for immediate damage suffered by the adversary, on the military level. Thus, a legal solution is found to the problem of "civilians linked to the military effort", who would not constitute a separate and distinct category of the civilian population, for the reasons already given. On the other hand, as will be seen in the following chapter on the protection of the civilian population, it has been necessary, to counterbalance this broad definition favourable to the civilian population, to make a restriction in favour of the principle of military necessity by indicating the high risks run by these persons who do not, in practice, enjoy the same degree of protection as other civilians, within the strict limits of their functions.

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23/ The concept of military effort is distinct from that of "war effort", which the State demands of all persons placed under its sovereignty and does not, therefore, comprise acts or activities directly linked to the military effort, nor, with still more reason, acts or activities directly linked to military operations.

24/ See above, Note 18.

25/ See above, Fig. 4, sub-section a); Note 16.

## Chapter 3

Protection of the Civilian Population1) General remarks

It has been seen, in Chapter 1, in tackling the problem of the distinction, that the norms of the law in force have already confirmed this principle, in that military operations must not be directed against the civilian population as such. It has also been seen that the principle of distinction, despite some opinions to the contrary, retains its full legal value, if one considers States' point of view.

The principle that military operations must not be directed against the civilian population as such is the expression of the norm of general protection 26/ which is met particularly in international customary law, although instruments of international law in force have also confirmed it, more or less explicitly and with regard to more or less specific situations 27/.

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26/ From the point of view of terminology, based particularly on the terms used in the Convention on Cultural Property of 1954, it is agreed that the term "general protection" embraces two notions : firstly, that of respect, which is the obligation to protect, assumed by the attacker and, secondly, that of safeguard, which is the obligation to protect assumed by the party attacked.

27/ The Declaration of St. Petersburg, in preambular paragraph 2, interpreted a contrario (Annex I); the Regulation on the laws and customs of war on land of 1907, particularly in Art. 22 (Annex III); the Convention on the Repression of the Crime of Genocide of 1948 (Annex VI); the Fourth Geneva Convention 1949, Parts 2 and 3, Section 1 (Annex VII); Art. 3 common to the four Geneva Conventions of 1949 (Annex VII).

But the three international resolutions often quoted (resolution XXVIII of Vienna, in its third principle, resolution 2444 (XXIII), resolution 2675 (XXV) in its substantive paragraphs 4 and 7 28/) expressly confirm this basic rule.

Nevertheless, many experts consider it advisable, although the norm relating to the protection of the civilian population already exists, to reaffirm it in a conventional instrument and within a text which would be very general in scope. It is also a necessity, as the second report of the Secretary-General points out 29/. Some of the methods found in the problem relating to the definition of the civilian population are quoted here. Among the questions put to the experts, the ICRC asked them if, apart from a general protection given to the civilian population as an entity, it were desirable and necessary to provide special protection for certain categories of persons 30/

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28/ Here are the texts of substantive paragraphs 4 and 7 of this resolution :

"4. Civilian populations as such should not be the object of military operations.

7. Civilian populations, or individuals members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity".

29/ Para. 34

"Paragraph 92 of the preliminary report has indicated that, while the scope of Convention IV is very broad, it does not extend specifically to dangers to civilians resulting from military operations. This question remains covered largely by the 1907 Hague Regulations".

Para. 35

"During the consideration of the preliminary report, the view was expressed that a major effort should perhaps be directed to a review of the relevant 1907 Hague Regulations which relate to the protection of civilians from military operations in order to adapt them, as may be necessary, to contemporary realities".

Secretary - General's report A/8052, paras. 34 and 35.

30/ As can be seen from the provisions of international law in force, particularly in the Fourth Geneva Convention of 1949, Arts. 16 para. 1., 18 para. 1, 23 para. 1 i.f., 24, etc.

and if this special protection could be developed and coexist with general protection without weakening the latter. The vast majority of the experts felt that, independent of a general norm which would reaffirm the protection of the civilian population as an entity, it would be advisable to continue the study of norms which would ensure a special protection for certain categories of persons, as a complementary measure. Consequently, this chapter contains two distinct parts; the first part relates to the general protection of the civilian population as an entity and the second part refers to the special protection of certain categories of civilian.

## 2) General protection of the civilian population

### a. Scope of the general norm of protection

Inadmissible and shocking though it is, it has to be stated that the norm of international law which establishes the general protection of the civilian population against the effects of military operations does not confer absolute immunity on it against the effects of attacks. This norm of general protection does not have the ideal scope which is to be desired, since it is subject to the principle of military necessity. It is thus that Art. 27 of the Hague Convention of 1907 (see Annex III) provides : "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings..." and that the principle of the resolutions XXVIII of Vienna and 2444 (XXIII) end with the words....."to the effect that members of the civilian population be spared as much as possible". The course of armed conflicts since the second world war, unfortunately seems to confirm the limited legal scope of the norm in question. The population remains exposed to some risks created by military operations, as will be seen further on; this observation is, and must be, an invitation which is all the more urgent to find and establish a procedure whereby differences may be settled peacefully, the only way, in the last analysis, to ensure true peace and thus guarantee the absolute immunity of the civilian population as a whole. Nevertheless, on the legal and practical levels, the Parties to conflicts have sought and succeeded in reinforcing this protection by means of

specific measures adopted in favour of certain categories of the civilian population.

b) The risks to which the civilian population is exposed

In practice, the civilian population can incur two types of risk : firstly, that of direct attacks, which are illicit by virtue of the principle of distinction and that which was referred to at the beginning of the above passage and, secondly, the risk of indirect attacks, which may also be illicit if other principles of international humanitarian law in force have not been respected, particularly the precautions to be taken to spare the civilian population (see below - Chapter 7).

The notion of indirect risks has been expressed in Art. 6, para. 3 of the Draft Rules, which provides :

"Nevertheless, should members of the civilian population, Article 11 notwithstanding, be within or in close proximity to a military objective they must accept the risks resulting from an attack directed against that objective".

This paragraph refers only to indirect risks, that is, those which are also described by the term of risk to the civilian population of "side effects" from an attack made on a military objective 31/. The experts consulted by the ICRC in 1970 expressed varied opinions : some of them, whilst recognizing the validity of the norm, considered it would be inadvisable and inhumane to affirm it in a conventional instrument, whereas others felt that the conception of Art. 6, para. 3 of the Draft Rules should be retained, because it corresponded to an inevitable concession to the principle of necessity. The ICRC felt, on this subject, that the notion of indirect risk should be studied and could only be the subject of a provision of the draft protocol under very specific conditions 32/.

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31/ See Reaffirmation Report, p. 67 to 75.

32/ See below the commentary following the ICRC proposal.

c. The dual character of the general norm of protection

The general norm of protection has two aspects which are complementary to each other but each of which must be clearly distinguished, especially because the second is not always recognized as it should be.

First of all, the general norm is expressed mainly through the idea that it is forbidden, by international law, to mount a direct attack against the civilian population as such. This rule, which is not contested, is best expressed by resolution XXVIII of Vienna, resolutions 2444 (XXIII) and 2675 (XXV).

In the second place, the general norm also comprises - although it is not always acknowledged - the rule it is forbidden for authorities responsible for a civilian population to expose them to direct attacks; the civilian population is not to serve as a shield. This idea has been expressed in Art. 28 of the Fourth Geneva Convention which provides : "The presence of a protected person may not be used to render certain points or areas immune from military operations".

This latter rule, it is true, appears among the provisions common to the territories of the Parties to the conflict and to occupied territories and must protect the civilian population from such measures that might be taken by the occupying force, that is, the opposing power. When it is its own population which is concerned, a government - it is to be presumed - will, on the contrary, take every possible measure to protect it and would not, in principle, have recourse to such procedures. However, the experts consulted by the ICRC have, as a majority, recommended that the rule be given a general character, particularly since the presumption mentioned earlier is not always applied in practice, having regard to the diverse situations which exist <sup>33/</sup>. The experts desired, in this way, that the intentional non-exposure of civilian population should be considered as being a fundamental right of such population, similar to the law of not being subject to direct attack, a law valid to all -

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<sup>33/</sup> See Secretary-General's Report A/8052 para. 42, d).

as is the law, for instance, on prisoners of war with respect to the inalienable character of the guarantees conferred upon it by the Third Geneva Convention of 1949. It was in this sense, moreover, that the Draft Rules provided an Art. 13 entitled : "Intentional exposure to danger", which forbade the belligerents to place or retain the civilian population under their control near military objectives for the purpose of inducing the adversary to abandon his attack on these objectives.

The rule in question, in its general form, appeared in the first draft of resolution 2675 (XXV), specifying that the civilian population must not be used to cover military operations 34/. The rule does not appear in the final text of the resolution. It can be imagined, nevertheless, that this deliberate or accidental omission probably results from the confusion of two quite distinct questions : that of the prohibition of the abusive exposure of the population as affirmed by Art. 28 of the Fourth Geneva Convention of 1949, and recommended by the experts, in its general form, and that of the so-called "passive" precautions of which mention will be made later 35/.

This confusion may arise from the fact that in both cases it is a question of duty, although quite different, for the party who suffers an attack. The case of the abusive exposure of the civilian population constitutes a crime against international law that cannot be justified under any circumstances, whereas, in the case of "passive" precautions, it is a question of special measures recommended to the authorities responsible for the civilian population, but with which the authorities can possibly dispense.

In fact, only the abusive use of the civilian population is illicit 36/, either for the purpose of protecting combatants, or for placing them near military objectives in order to camouflage them as non-military objectives so as to induce the adversary to abandon his attack. On the other hand, recourse to the civilian population in the case of a levy "en masse", or resistance,

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34/ See Res. A/C.3.L.1806.

35/ See Art. 18, last para. of the Fourth Geneva Convention of 1949.

36/ Mention is also made of the exposure of the civilian population.

or the use of non-military objects for military purposes, as in the case of the "taxis of the Marne", are not illicit in themselves, but they have an important consequence : the civilian population then become combatant and non-military objects military ones; thus they lose the benefit of the protection accorded them by humanitarian law 37/.

d. The rights and duties of civilians

As regards the rights of civilians, it is unanimously agreed that they have the right to general protection and that, consequently, it is contrary to international law to mount attacks directly against them; but, with respect to the duties of civilians, there still exists some confusion, which is highly prejudicial to their interests. Is it a question of a duty not to directly participate in military operations or of a much more onerous duty not to take an active part in the military effort, or even in the war effort ? Further, what dangers will the civilian population risk being confronted with, or at least some civilians, should one or the other of the duties be "violated" - ill defined as they are 38/ ?

The great majority of the experts consulted in 1970 felt, however, that civilians could only enjoy general protection in so far as they refrained from taking part in hostilities. It is recalled that these latter terms can be interpreted in a variety of ways and that, conse-

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37/ Similarly, the problem of prohibiting attacks mounted directly against the civilian population, which also constitutes a crime against international law, is quite distinct from the problem of "active" precautions to be taken to spare the civilian population (see Chapter 7).

38/ The Institute of International Law discussed this problem at length at its Edinburgh session in September 1969 and finally adopted Art. 5 of its resolution; the members of the Institute finally reached agreement, after having arrived at the conclusion mentioned at the end of para. c) above.

quently, there are at present, differences of opinion on the subject of the protection to be given to or withheld from those who take an active part in supporting the military effort.

For its part, the ICRC reiterates, as it stated in the commentary on the definition of the civilian population, that the relationship of adequate causality between the act or activity of a person and the damage inflicted upon the adversary on the military level, remains the only conceivable criterion; this criterion, consequently, determines the duties of civilians and of belligerents, at one and the same time : civilians should refrain from any act or activity having a direct result on military operations, whereas belligerents should not consider any person whose acts or activities do not have a direct result on military operations, as a military objective.

e. Reprisals

In the questionnaire sent to the experts consulted in 1970, the question of reprisals was limited exclusively to the civilian population. The experts have not failed to draw attention, in this connexion, to the importance of the norm contained in Art. 33 of the Fourth Geneva Convention of 1949 39/.

If this rule retains its full value, it has to be said on the other hand, that there are some divergencies of interpretation with regard to its scope. This provision is included in Part III : "Status and Treatment of Protected Persons", Section I : "Provisions common to the territories of the parties to the conflict and to occupied

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39/ This article provides :

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited".

territories" of the Fourth Convention of Geneva of 1949. The majority of the experts, like the ICRC, feel that this provision applies to the civilian population of the occupied territories as well as to that of the non-occupied territories, since it does not appear in Part II of the Fourth Geneva Convention of 1949. On the other hand, a minority of the experts considered that the above-mentioned article only applies to the civilian population of the occupied territories. Finally, except by analogous interpretation, it has to be stated that this provision is not directly applicable to armed conflicts of a non-international character and that the Article 3 common to all four Geneva Conventions does not mention the prohibition of reprisals.

Some of the experts thought, moreover, that the rule forbidding reprisals against the civilian population as a whole, or against individual civilians is implicitly contained in resolution XXVIII of Vienna and resolution 2444 (XXIII), in the principle which forbids attacks on the civilian population as such, whereas other experts contested this interpretation. Resolution 2675 (XXV) contains an express provision on this subject, forbidding both reprisals directed against civilian populations and those directed against individuals who form part of such populations.

In the interest of protecting the law and with a view to obtaining a provision which is applicable to all types of armed conflict, the ICRC considers it advisable to reaffirm the rule prohibiting reprisals against either the civilian population or individual civilians. This is also the opinion of the Secretary-General, expressed in his second report 41/.

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40/ Resolution 2675 (XXV), substantive paragraph 7 (see Annex XI).

41/ See report by Secretary-General A/8052, para. 42, c).

Concrete proposal by the ICRC

The ICRC proposes to insert the following provision in the basic rules of the draft protocol on the protection of the civilian population in armed conflicts :

"The civilian population shall enjoy general protection against dangers arising from military operations. The civilian population should not, in particular, be the object of attacks mounted directly against it. Neither should it be used, by its presence, to render certain points nor areas immune from military operations.

Nevertheless, civilians whose activities directly contribute to the military effort, assume, within the strict limits of these activities and when they are within a military objective, the risks resulting from an attack directed against that objective.

The civilian population taken as a whole, like the individuals who constitute it, must never be made the object of reprisals".

Commentary

Having regard to the foregoing considerations, a few remarks will suffice. This project enlarges the general protection given to the civilian population in all situations and in all types of conflict.

In the first paragraph, it expresses the dual character of general protection 42/, and integrates the formula already affirmed in Art. 28 of the Fourth Geneva Convention of 1949, mentioned above.

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42/ With regard to the attacker, the prohibition consist of prohibiting attacks mounted directly against the civilian population, whereas as regards the party attacked, the prohibition consists of prohibiting the abusive exposure of the civilian population.

The second paragraph introduces the conception of risk, but a propos of "civilians linked to the military effort". This concession to the principle of necessity has the sole purpose of permitting and encouraging a general consensus of opinion with regard to the inclusion of these persons within the civilian population as such. This rule does not change their status in any way : even in their acts or activities directly linked to the military effort, they remain civilians and, therefore, never become military objectives themselves. It would be erroneous to think that persons linked to the military effort could be the objective of an attack mounted directly against them.

In practice, all civilians incur the risk of suffering from the indirect effects of attacks directed against military objectives, but it was not considered advisable to express this in a provision. What, therefore, is the difference between the indirect risk assumed by civilians in general who find themselves by chance in the close proximity to a military objective and the indirect risk incurred by "civilians linked to the military effort" situated within a military objective by virtue of their acts or activities ? The difference lies not in the nature, but in the degree of protection given : the precautions to be taken by the attacker to spare civilians in general when they are located in close proximity to a military objective would be greater than those taken to spare civilians linked to the military effort, within the strict limits of their acts or activities 43/. Thus, the indirect risk assumed by civilians linked to the military effort within the limits of their acts or activities at the moment of attack is, in fact, a greater one.

### 3) Protection of certain categories of the civilian population

#### a. The origins of special protection

The special protection of certain categories of "privileged" persons goes a long way back in the evolution

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43/ Precautions exist and may be taken with regard to the latter. For example, the attacker would choose to bomb a munitions factory when the workers were not present there.

of international humanitarian law. It can even be said that originally, only this protection was sought after because military practice, during the era of frontal war, hardly ever questioned the principle of general respect due to the civilian population as a whole. Thus, in the first place, the only effort made was to seek to establish certain norms of special protection for the wounded and sick of the armed forces and for those who helped them : physicians, male nurses and military almoners.

With the technical development of the means and arms employed in conflicts, it was realised that there was a need, without prejudice to the principle of general protection - due always to the civilian population - for attracting the attention of belligerents, no longer solely to certain categories of military personnel, but also to certain categories of civilians; its was in this spirit that Art. 16 of the Fourth Geneva Convention of 1949 was conceived, as one example 44/.

b. Scope of special protection

As the Commentary on the Fourth Geneva Convention of 1949 clearly indicates - relative to this Art. 16 - in no circumstances and in no way whatsoever is the special protection due to wounded, sick, or crippled people or pregnant women to be considered as relieving the belligerents of their obligations to accord to the whole of the civilian population, the protection which is its due. This special protection is not to be substituted for, but is to be superposed upon, general protection.

Moreover, the general protection of the civilian population and the special protection of certain categories of civilians are of the same nature, de lege lata : in the sense that in both cases the Parties to the Conflict may not invoke the slightest pretext for divesting themselves of their obligations towards the civilian population as

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44/ This article provides, in its first paragraph :

"The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect".

a whole or towards certain specified individuals. However, neither one form of protection nor the other ensures the civilian population or certain specified individuals absolute immunity against the side effects of attacks directed against military objectives 45/.

Thus, the norms of special protection to be accorded to certain categories of civilians (or military personnel), may be considered as an express invitation to the Parties to the conflict to intensify their precautions because of the state (weakness or special vulnerability) or function (humanitarian aid and help) of these persons.

Of course, de lege ferenda, it can be asked if it is possible and realistic, by establishing a system of zones, to ensure absolute immunity, guaranteeing the civilian population against the indirect risks resulting from attacks. Alas! the rather negative experience gained from neutralized zones (which only apply to the direct effects of attacks) is not very encouraging in that direction. With regard to reprisals, it is felt that the question has been sufficiently covered in the last concrete proposal.

c. The rights and duties of persons under special protection

The existence of norms of special protection has the additional advantage of allowing certain civilians to be favoured, in an objective manner, by having recourse to criteria to which reference has already been made : state of persons (age, sex, weakened physical or mental condition, etc.) and their functions (aid and help to the aforementioned persons).

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45/ Thus, where Art. 24 (and 26) of the 1st Geneva Convention of 1949 states that medical personnel and almoners will be protected "in all circumstances", it is understood that this excludes reprisals and all other attacks mounted directly against them; but it is obvious that the Parties did not want, and are never in a position, to guarantee the absolute immunity of these persons from side effects (indirect risks).

Significantly, the terms "to guarantee" and "absolute immunity", being illusory, are not found in the Geneva Convention of 1949.

The rights and duties of persons enjoying special protection may, de lege lata, vary according to the persons protected. By comparing, for instance, Arts. 14 para. 1, 15 and 23, paras. 1, of the Fourth Geneva Convention, one notes that they do not always apply to the same categories of persons. Nevertheless, one can extract certain general rules.

With regard to rights, it may be a question of a right to special assistance (Art. 24 of the Fourth Convention), a right to special respect (Art. 27, para. 2 of the Fourth Convention), a right to wear a protective emblem (Arts. 24 and 26 of the First Convention), a right to go to "privileged" places (Arts. 14, 15 and 18 of the Fourth Convention), or a right to benefit from certain exceptional measures (Art. 23, para. 1 of the Fourth Geneva Convention).

With respect to the duties of civilians, they are to refrain from directly participation in military operations and, on occasion, to refrain from taking an active part in the military effort 46/.

#### d. Cases in point

Various proposals were advanced by the experts consulted in 1970 relating to the special protection to be given to certain categories of civilians. These persons also referred to the two above-mentioned criteria (humanitarian function and condition of persons). They may be regrouped into three categories :

##### 1. Persons who exercise a humanitarian function

Two groups of persons offer assistance and specific care to the civilian population, but their tasks are more complementary than identical 47/. Without always putting them on the same footing, the experts mentioned :

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46/ Of course, those thus favoured must not abuse their privileges.

47/ A wounded person may not be given treatment unless he has been rescued from ruins, or unless the fire threatening him has been brought under control.

- i. civilian medical personnel,
- ii. civil defence service personnel.

2. Persons deserving special protection by reason of their condition

- iii. women,
- iv. children,
- v. wounded, sick and infirm.

3. Other persons

- vi. journalists,
- vii. members of the police forces,
- viii. members of the fire services.

i. civilian medical personnel

This subject will be dealt with again in Document VII "Protection of the sick and wounded", first part, I.

ii. civil defence service personnel

This subject will be dealt with again in the second part of this Document.

Concrete proposal by the ICRC

The ICRC feels that a general provision in favour of persons accomplishing humanitarian tasks could be included in the basic rules on the protection of the civilian population.

"The Parties to the conflict shall facilitate the task of medical personnel; they shall authorize the civil defence service personnel to accomplish their mission, especially when their functions are mainly exercised in favour of the civilian population and individuals".

### Commentary

Only a few "key" ideas will be stressed here. This provision is intended to be nothing more than a recommendation and does not ensure exactly the same rights to the two categories, having regard to the two quite distinct tasks incumbent upon them. Medical personnel should be able to accomplish their humanitarian task in all cases, whereas civil defence service personnel should receive authorization in all cases where they exercise their functions mainly in favour of the civilian population. As has been shown by the example quoted previously, it is necessary to relate the functions of medical personnel and of civil defence service personnel, in view of their complementary nature.

### iii. Women

The Committee on the Condition of Women adopted a resolution 48/ in April 1970, on "the protection of women and children in period of emergency or in time of war, in periods of struggle for peace, national liberation and independence", in which the Secretary-General of the United Nations is requested to give special attention to the question of the protection of women and children in periods of emergency and in time of war.

Some of the relevant provisions of existing international law may be quoted here. With regard to special protection, mention can be made of Art. 16, para. 1 of the

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48/ Resolution 1515 (XLVIII) ECOSOC.

Fourth Convention and Art. 27, para. 2; as regards specific rights - Arts. 14 para. 1 i.f., 23 para. 1 i.f.; Art. 14 para. 1 refers to "expectant mothers, and mothers of children of under 7 years", whereas Art. 23 para. 1, more restrained, refers simply to "expectant mothers and maternity cases". One has seen above that Parts II and III, Section I of the Fourth Geneva Convention of 1949, to which the articles quoted belong, have aroused differences of opinion as to the interpretation of their scope.

The experts are fairly divided as to the question of the special protection of women. One body of opinion feels that the question has been sufficiently settled by the present law in force and is based on the fact that, nowadays, more and more recourse is made to women, either in the armed forces, or in the auxiliary organizations attached to them. The other body of opinion, also aware of this observation, feels, nevertheless, that a distinction between the different situations in which women can be placed should be established. Some experts do not feel, therefore, that special protection should be given to women as such, but suggest rather that the ideas contained in the above-mentioned articles should be developed and incorporated in one or more norms which would apply to all situations and to all types of armed conflict, for expectant mothers, maternity cases <sup>49/</sup> and the mothers of young children, under the condition, of course, that women belonging to the different groups do not engage directly in military operations. Others felt that it was necessary to stress, with regard to protection, the idea of material aid that the Party to the conflict who would be responsible for this should give to these categories of women.

#### Concrete proposal by the ICRC

As things stand at the moment, the ICRC is not yet able to propose here one or more rules in a precise form. The ICRC feels that the legal provisions now in force, and

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<sup>49/</sup> See Document No. VII - Additional Draft Protocol to the Fourth Geneva Convention of 1949 relating to the protection of the sick and wounded - Art. 2.

which have already been referred to, should be applied as broadly as possible in all situations and in all types of armed conflict, as is the case, moreover, with all the articles contained in Parts II and III, Section I of the Fourth Geneva Convention of 1949.

Would it be advisable to reaffirm and develop these norms ? For the moment, it is up to the governments to make a pronouncement on this subject; if the experts could formulate the above-mentioned proposals on the additional aid to be given to women in these situations, the ICRC would be only too delighted.

#### iv. Children

Apart from the mandate, referred to above, which has been given to the Secretary-General, the main legal provisions now in force, regarding children, should also be pointed out. The question of the protection of children may be considered from three different view-points :

- the problem of the protection of children against attacks,
- the problem of relations between children and the ("governmental" or "foreign") party under whose control they are placed,
- the problem of their use in military operations.

The first aspect is not affirmed by any written legal provision and will be the subject of a concrete proposal by the ICRC, who will base it on Art. 16 of the Fourth Convention (in which children are not mentioned). The second aspect is partly covered by Art. 24 "Special measures in favour of children", of Part II, Art. 38 para. 5 "Non-repatriated persons" and Art. 50 "Children" of Part III of the Fourth Geneva Convention of 1949. The third aspect has not even been studied up to now, yet it is the most important one since children are becoming increasingly involved in war, being either used to assist irregular forces, or made the subject of military operations. On this subject too, the ICRC will submit a proposal valid for all the Parties to the conflict and in all circumstances.

With regard to existing law, there are Arts. 14 para. 1 and 23 para. 1, which bear only on certain rights and advantages enjoyed by children aged under 15 years.

It may be said that the same opinions have been expressed by the experts with regard to the special protection to be accorded to children and that to be given to women. A minority consider that the matter has been adequately covered by existing legislation, having regard to the fact that children are taking part in military operations to an ever greater extent. Other experts laid emphasis on the material assistance that the Party to the conflict responsible for it would be obliged to give them, apart from protection.

#### Concrete proposal by the ICRC

The ICRC is greatly concerned at the increasingly tragic and grievous fate suffered by children in armed conflicts and it feels that a specific provision should appear among the basic rules, such as the following stipulation :

"Children of less than 15 years of age (or : children, or:young children) shall be the object of special protection.

The Parties to the conflict shall make every effort to keep them away and safe from military operations".

### Commentary

The need for the special protection of children has been unanimously recognized since the "Declaration of the Rights of Children" 50/, Art. 8 of which provides :

"The child shall in all circumstances be among the first to receive protection and relief".

Three remarks will, therefore, be sufficient. As regards the age of children, the ICRC desires that it be specified, as in several of the provisions already referred to, that children of under 15 years of age are concerned. Above all, the development of youth must be respected and encouraged and every effort made to ensure that they do

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50/ Issued by the UN General Assembly on 20.11.59. See A/Res. 1386 (XIV). In this respect the following principles are also important :

#### Principle 9

"The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development".

#### Principle 10

"The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men".

not suffer, so unjustly, from the consequences of an armed conflict for which they are not responsible. Nevertheless, should the question of age cause difficulties to arise, a more general formula can be fallen back on, such as the mention of "children" or "young children".

The first paragraph, as already indicated, deals with the idea that the protection of children must be expressly provided for in a very broad provision, since Art. 16 of the Fourth Convention does not mention them. This protection would be of the same kind as that enjoyed by other civilians in general and, obviously, it would not be considered merely as replacing general protection or being substituted for it.

Finally, the second paragraph, which is only intended as a recommendation, reflects these two main ideas. Firstly, the Parties would make every effort to "keep children away from military operations", which means that children should not be the object of an attack, or be used as auxiliary military personnel, these two obligations being incumbent on all the Parties to the conflict. The violation of one of them would, alas! necessarily have repercussions on the respecting of the other. Secondly, by the phrase "safe from military operations" it is intended to draw the attention of the Parties to the need for taking "passive" precautions, specifically with regard to children, which does not mean, however, that other civilians should not benefit from them.

#### v. The wounded, sick and infirm

This subject will be dealt with in Document VII : "Protection of the Sick and Wounded", Commentary on the Additional Protocol to the Fourth Geneva Convention of 1949, Art. 2.

#### vi. Journalists

The protection of journalists has been the subject of a resolution adopted at the XXVth General Assembly,

resolution No. 2673 (XXV) "Protection of journalists on perilous missions in zones of armed conflict", the text of which is to be found in the general documentation. The ICRC, not having received any specific mandate on this subject from the XXIst International Conference of the Red Cross, nor a specific invitation from the XXVth General Assembly of the United Nations, can only follow the development of the question attentively at this stage. The ICRC has taken note of the fact that the Secretary-General of the United Nations, in substantive paragraph 6 of the above-mentioned resolution, has been asked to submit a report on this subject to the XXVIth session, to be drawn up "in consultation" with the ICRC. An article on journalists recently appeared in the International Review of the Red Cross, which will serve as a reference 51/.

vii. Members of police forces. viii. Members of fire services

Certain police force associations and firemen's associations seek protection on the international level in the case of armed conflicts and desire to see their status of civilians affirmed.

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51/ International Review of the Red Cross, January 1971.

## Chapter 4

Distinction between non-military objects  
and military objectivesGeneral remarks

The traditional distinction between "civil element" and "military element", a theme developed in the preceding chapters 52/, is intended to differentiate between persons who are licit or illicit objectives and to establish objective criteria for all problems relating to the civilian population and individual civilians. In the same way, the distinction between non-military objects 53/ and material military objectives, has similar aims : it implies in particular, that illicit objectives be identified when attacks are mounted and that all measures be taken to respect and safeguard protected things; secondly, it reinforces the protection of the civilian population. This protection can only be assured if the distinction is made between non-military objects and military objectives (for example, housing and constructions designed for the use of the civilian population).

The rule for distinguishing between non-military objects and military objectives has not been expressly affirmed by written law, but according to customary law, housing and constructions may not be considered as military objectives. Nevertheless, it would appear that the distinction has already been implicitly affirmed in several legal instruments 54/.

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52/ See above, Chap. 1 1).

53/ The resolution of the Institute of International Law affirms this new terminology. Many authors still use the expression "non-military objectives", which is a contradiction in terms.

54/ See the Declaration of St. Petersburg, Principle 2 (Annex I), Art. 23 (g) of the Hague Conventions of 1907 (Annex III) and Resolution 2675 (XXV) Principle 5 (Annex XI).

There is a substantial body of opinion that wishes to introduce, de lege ferenda, this principle, either indirectly as in Art. 24 para. 1 of the Rules of War in the Air of 1923 (Annex XXII) and in Art. 7, para. 1 of the Draft Rules (Annex XIX), or directly, as in Art. 1 of the Institute's resolution.

The need for the principle of the distinction between non-military objects and material military objectives is in direct relation to certain aspects of the protection of the civilian population itself.

The distinction was established for the first time in a resolution by the Institute of International Law - first Article - following discussions at its Edinburgh meeting (see Annex XXIV). The ICRC, in developing this principle, wishes to take up an idea which has already been the subject of scientific study and which has met with fairly general approval both within the Institute of International Law and among the experts invited to give their views.

#### Concrete Proposal by the ICRC

The ICRC proposes to introduce a provision analogous to that which it formulated regarding the distinction between the civilian population and personal military objectives. The provision will be included in the basic rules of the draft protocol on the protection of the civilian population in armed conflicts :

"In the conduct of military operations, the distinction must be made at all times between military objectives and non-military objects, so that the latter be spared as much as possible."

#### Commentary

In the proposal relating to the definition of non-military objects, it will be seen as to what meaning can be attached to these terms. Reference will also be made to the preceding considerations, as well as to the

commentary relating to the distinction laid down in Chapter 1.

Moreover, this provision will be expanded by a third paragraph on the subject of military objectives 55/.

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55/ See Chap. 5, Fig. 2, below.

## Chapter 5

Definition of non-military objects1) General remarks

The questionnaire, drawn up for consulting the experts in 1970, started out from the idea that attacks could be limited to military objects, in the light of the Draft Rules. The replies given by almost all the experts encouraged the ICRC to modify or, rather to adjust its position. Firstly, by comparing the proposals contained in the Draft Rules, Art. 7 with those of the Institute of International Law, (substantive paras. 2 and 3 of the above-mentioned resolution) the majority of them support the Institute's wording because it is very difficult to establish an exemplary list of military objects <sup>56/</sup> and because the Institute's resolution better expresses the criterion of the function of these objects. Secondly, having pointed out the difficulties inherent in the definition of military objectives, the experts felt that the work done by the Institute of International Law in Edinburgh relating to non-military objects would permit a positive definition of these latter to be reached more easily and which would represent a more humanitarian point of view and, consequently, more acceptable. A positive definition of non-military objects could be supplemented by an exemplary list of these objects.

That is why the ICRC has found it advisable to prepare a definition of a general nature of non-military objects by regrouping the common denominators of the objects already expressly protected by the law in force. The reason why the ICRC is concentrating on a general definition of non-military objects will be easier to understand and more logical from a humanitarian point of view if mention is made, first of all, of what is to be spared and protected in all circumstances.

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<sup>56/</sup> See Art. 7 of the Draft Rules replaced in an annex indicating the different categories of military objectives.

The need for a general definition is important for several reasons. We have seen that the general protection of the civilian population was not sufficiently assured by a simple norm; by virtue of the risks that civilians run as a result of attacks on military objectives and by virtue of the constant and abusive enlargement of this latter conception, it is worthwhile to develop the general definition of non-military objects designed for the use of the civilian population and, conversely, to limit the concept of military objectives.

## 2) Remarks on the concept of military objectives

### a. Military objectives

For the purpose of maintaining the proper sequence, one will start with the problem of the military objective and by recalling the attempts to find a definition made in the past. The analysis of the difficulties which have arisen in this connexion will enable conclusions for the definition of non-military objects to be drawn.

There are several reasons justifying an examination of the notion of military objectives. It was particularly necessary to specify the licit aims of military operations in order to have these aims identified and spare illicit objectives.

Allusion has been made only to the notion of military objectives in the various provisions of current international law as, for example, in Art. 8 of the Convention on the protection of cultural property (see Annex VIII), in Art. 19 of the Fourth Geneva Convention of 1949 (see Annex VII), without it having been made the subject, as such, of an explicit and precise definition, which has in practice, brought about some grave abuses from which the civilian population and non-military objects have suffered.

In the publicists' teachings, there are many attempts at a definition - of a positive or negative character - of military objectives, de lege ferenda 57/. Most of them

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57/ See Art. 24 paras. 1 and 2 of the Rules of the War in the Air of 1923 (see Annex XXII) and Arts. 2 and 3 of the resolution by the Institute of International Law (see Annex XXIV).

have not often been approved for several reasons : the definition of a positive character was considered as being too exemplary and for this reason, too restricted (Art. 7 of the Draft Rules, see Annex XIX) whereas the negative definition was considered as being too vast and creating too many possibilities for misunderstandings to occur in the different situations and types of armed conflicts.

Another problem consisted of knowing what should be the criterion for delimiting a military objective. At the beginning of the century already recourse was had to several criteria. One of them was that of the use for naval requirements (see Art. 2 of the IXth Hague Convention of 1907 - Annex IV) 58/.

Another one was the criterion of defence or non-defence 59/.

A distinction was made, therefore, before the war of front to determine military objectives, by having recourse either to the criterion of the military nature of the object, or to that of its function for the defence front. This criterion of function became more and more necessary, having regard to the growing importance of military aviation and of war of movement. Conversely, however, according to this latter criterion on object which, by its normal purpose, constitutes a military objective, may become a non-military object if its function changes (for example, the barracks abandoned by troops and transformed into a hospital 60/.

Another difficulty encountered in defining a military objective resides in the fact that there were two quite

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58/ This was a criterion on the function of objects which were well specified and delimited (installation and construction).

59/ This was a factual state that served as a criterion of function for certain objects or, rather, certain entities, such as non-defended places (see Art. 25 of the Hague Convention of 1907 and Art. 1 of the IXth Hague Convention of 1907).

60/ As one will see later on, the criterion of function is indispensable, especially for resolving the question of mixed objectives.

distinct standpoints adopted in customary law. The first trend, more one of a military nature, was to enlarge the concept of the military objective in such a way as to introduce, in one form or another, the concept of military necessity 61/. This formula obviously presented the danger of opening the door to total war; it was also this that engendered the difference between military objectives and strategic objectives, which is neither objective nor juridical 62/. Nevertheless, the justification for destruction or a bombardment always depended upon not only the military nature of the objective but also on additional conditions 63/. The other trend, more one of a humanitarian nature, was intended to limit the conception of the military objective by introducing the idea of the immediate military advantage of the destruction of an objective 64/; but, without taking account of the objective situation of the party attacked, this formula is always to the advantage of the attacker.

Thus, in both cases the estimation of the military nature depended on the subjective point of view of the interested party : the author of the attack. It is, therefore, necessary de lege ferenda, in order to specify the notion of

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61/ In this way, any object becoming a military objective to the extent that its destruction or bombardment constitutes an element of military interest. It is obvious that this interest depends on the unilateral estimation of the Parties to the conflict.

62/ On the basis of this distinction, a military object becomes a military objective through the simple fact that its destruction or bombardment often represents an element of military interest for the attacker, even at long term.

63/ These conditions were stipulated in the norms relating to "active" precautions - see below Chap. 7 - and those relative to the prohibition of certain types of bombardment - see below, Part IV, Chap 2.

64/ This is particularly the case with Article 7 of the Draft Rules.

military objective, to juxtapose, with the natural criterion, a criterion of function which relates to an objective factual state; that is, to the effective use of the objective concerned, for the party which suffers or is going to suffer an attack. Carrying on this idea, it would no longer be a question of military interest or the military advantage of the author of the attack which would decide the intrinsic military character of the objective, but rather the purpose or use of this objective for the party concerned 65/.

It is also necessary to refer here to the theory of adequate casality. One should concentrate on the direct relationship between firstly, the military character of the objective and secondly, the direct use that such an objective has in the military effort or operation conducted by the party who is to suffer or who is suffering from an attack. An objective would only become a military one under two conditions : firstly, this objective must be of a military character, either in consideration of its very nature or of function at the moment of attack, and secondly, this objective must reinforce in adequate manner, the military effort or operations of the party who is to suffer the attack 66/.

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65/ The criterion of military advantage, used in Art. 7 para. 3 of the Draft Rules of 1956, did not only represent an additional criterion (other than that of the criterion of nature), but also it was linked to the problem of the licitness of destruction. Now it is necessary to avoid confusing the idea of military advantage with that of the licitness of destruction, with regard to the definition of military objectives. It is a question of two problems which must be studied separately. The criterion of military advantage must not be abandoned, however, but taken into consideration when precautions are taken at the moment of an attack on a military objective (see Chap. 7 below and Title III, Chapt. 2).

66/ Thus, a fortified city, or one making up part of the defensive emplacement, would lose its character of a licit objective if the party concerned who could suffer the attack expressly renounced the defence of the city.

b. Mixed objectives 67/

The term "mixed objectives", in a general sense, appeared with the extension of the theatre of military operations and especially with the development of strategic aviation.

All the above-mentioned attempts at a definition of military objective have not been sufficient to solve the problem of mixed objectives. The military trend was that all mixed objectives, in the widest sense of the term, became military objectives in principle, whereas, the humanitarian trend was that all mixed objectives in the widest sense, should remain non-military objects. It is by finding a more objective criterion of function which is better adapted that a solution to the problem of mixed objectives, in a general sense, can be found 68/.

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67/ In terminology used up to date, the term "mixed objectives" was chosen to apply to two categories of object; firstly for the category which will be called "mixed objectives in the strict sense", that is, objects which can be used for both military and civilian requirements at the same time; secondly, for the category of object which will be called "mixed objects" that is, objects which, according to their usual purpose, are non-military objects but which, by means of a simple transformation, may easily be used directly in the military effort or operations; these latter are, so to speak, "potential military objectives". A mixed objective would be, for example, a factory producing both civilian and military equipment and a mixed object would be a school turned into a barracks.

68/ The difference between "mixed objectives" and "mixed objects" would be the following :

- a) The mixed object would only become a military objective if it took on a direct military function following a change, despite its usual purpose.
- b) The mixed objective, in the strict sense, would only become a military objective on two conditions : firstly, its function in support of military requirements must be preponderant; secondly, its military function, if it were preponderant, must represent an adequate cause in the military effort or operations for the party undergoing an attack.

### Concrete proposal by the ICRC

Having regard to the foregoing considerations, the ICRC will place the stress on non-military objects. Nevertheless, as an additional measure, and taking account of the abusive use of the concept of a military objective, the ICRC makes another two proposals.

The first would be to affirm in a final paragraph of the two basic rules relative to the distinction between civilian population and non-military objects on the one hand and military objectives on the other, the obligation on the parties to the conflict to restrict their attacks to military objectives. This paragraph could read as follows:

"consequently, attacks must in all circumstances be restricted to military objectives alone."

The second proposal would consist of introducing a definition of military objectives into the regulation of execution of the Draft Protocol. Alternatively, the ICRC proposes, as a basis for discussions and bearing in mind the reservations made above, firstly, the resolution of the Institute of International Law (see Annex XXIV) and secondly, the text of Art. 7 of the Draft Rules (see Annex XIX).

### 3) Non-military objects

It is now time to examine additional questions which arise in connexion with a definition of non-military objects. This examination will show that the problem presents itself formally, in a way similar to that of the definition of the civilian population, because the old tripartite division for objects (non-military objects, mixed objectives and military objectives) corresponds to the old tripartite division for persons (civilians, "quasi-combatants" and military personnel). The only difference, as compared to the definition of the civilian population, consists of knowing if the concept of non-military objects (which must be made the subject of a definition and subsequently of a general protection), may, or not, also be as broad as possible. It is useful, in tackling this question to bear in mind the fact that non-military objects are generally taken into consideration only to the extent that their respect and safeguard is required because of the needs of the civilian population.

It may be noted that, de lege lata, no definition has ever been given as to what is understood by non-military objects, except through certain provisions 69/ defining or protecting, in a casuistic way, certain non-military objects that have been well specified.

All these provisions do not, therefore, in a general way, speak of non-military objects, but provide for the particular protection of non-military objects of a different nature and often do not even define what these objects represent. One finds protected objects that are isolated, like health installations and objects and hospitals, or again, protected objects which are grouped together, like safety zones, neutralized zones, non-defended areas and cultural centres 70/.

The ensemble of non-military objects, mentioned in these various provisions, obviously do not constitute the ensemble of non-military objects designed for the use of the civilian population and, in order to arrive at a general notion of non-military objects, their common denominators must be sought. These latter alone can permit the notion of non-military objects in its widest sense to be specified objectively and, at the same time, permit the scope of an interpretation a contrario of military objectives to be limited, because, with the sole legal provisions in force, this last danger is too great.

The attempts made to find a definition of non-military objects, de lege ferenda, mostly deal only with specific non-military objects which could never be made the objects of attack 71/.

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69/ See Arts. 19, 20 and 23 of the First Geneva Convention, 1949; Arts. 22, 23 and 24 of the Second Geneva Conv.; Arts. 14, 15 and 18, 19 and 21 of the Fourth Geneva Conv.; 1 and 4 of the Conv. on cultural Property.

70/ These provisions are important because they accord particular protection to certain categories of non-military objects and this subject will be referred to in Chap. 3, 3) and Chap. 6, 3).

71/ See, for example, Art. 6, para. 2 and Art. 16 of the Draft Rules of 1956. It is true that the Draft Rules expressed the idea that it was desired to specify everything that might be attacked, so as to exclude a contrario everything that could not be.

The resolution of the Institute of International Law (see Annex XXIV), Art. 3, is a remarkable attempt to enlarge the concept of non-military objects and constitutes a worthy working instrument. The experts consulted by the ICRC in 1970 were in favour of the measure adopted by the Institute of International Law and felt that the idea of a general definition could be developed. On this occasion they indicated their clear preference for a list of non-military objects to supplement a general definition and their clear reservations with regard to an exemplary list of military objectives (as envisaged by Art. 7 of the Draft Rules).

One of the main problems which arise in arriving at a definition of a general nature of non-military objects, consists of fixing the possible criteria which will determine the non-military character of objects designed for the use of the civilian population.

In the discussions at the Edinburgh meeting of the Institute of International Law relating to Art. 3 of the resolution (see Annex XXIV), two types of non-military object were referred to : firstly those which are expressly protected by an agreement or convention and secondly, those which are such by virtue of their nature or their function but which are not mentioned in any legal instrument. This technical and limited enumeration (Art. 3 ab initio) was finally supplemented in this article by an enumeration of non-military objects, by way of example, where the criterion of nature and that of use are mentioned; these criteria permit the military or non-military character of objects to be distinguished (a and b). This article of the Institute's resolution is the following :

- "3. Neither the civilian population nor any of the objects expressly protected by conventions or agreements can be considered as military objectives, nor yet
- (a) under whatsoever circumstances the means indispensable for the survival of the civilian population,
  - (b) those objects which, by their nature or use, serve primarily humanitarian or peaceful purposes such as religions or cultural needs."

It will be noted in passing that the criterion of function, in a limited manner, was contained in Art. 8, Fig. 3, of the Convention on Cultural Property of 1954 (Annex VIII) for monumental centres; in a wider way, this

criterion was introduced into substantive paragraphs 5 and 6 of the resolution 2675 (XXV) (See Annex XI) 72/.

The criterion of function, supplementing that of nature, permits the non-military character to be restricted to objects which are designed for the use of the civilian population and which are not used for military purposes.

#### Concrete proposal by the ICRC

The ICRC proposes to introduce a definition of non-military objects, as broad a one as possible, in that part of the basic rules of the Draft Protocol relating to the protection of the civilian population in armed conflict, such as the following :

##### Definition of non-military objects

"Objects reputed to be non-military are those necessarily or essentially designed for the civilian population, even should they subsequently assume a preponderantly military character following a transformation of their use.

Non military objects are those such as houses and constructions which shelter the civilian population or which are used by it, foodstuffs and food producing areas, and water sources and tables".

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72/ These paragraphs read as follows :

"5. Dwellings and other installations that are used only by civilian populations should not be the object of military operations.

6. Places or areas designated for the sole protection of civilians, such as hospital zones or similar refuges, should not be the object of military operations."

Commentary

The first paragraph determines the context of non-military objects in general, by restricting itself to those objects only that are designed for the use of the civilian population. The term "necessarily" refers to the criterion of nature, which is able to qualify all objects which are, by their very nature, designed for the use of the civilian population (for as long as their nature is not altered); the term "essentially" refers to the criterion of function, which is able to qualify all objects which are habitually used by the civilian population (for as long as their use is not modified). The end of the first sentence corresponds, mutatis mutandis, to the idea developed in the definition of the civilian population with regard to "civilians linked to the military effort". That means that objects which are "potentially" military do not lose, through this sole fact, their non-military character, for as long as no change occurs which affects their nature or their use.

The introduction of the term "preponderant military character", allows the problem of mixed objectives to be solved; these are presumed to be non-military to the extent that they are not preponderantly used for military purposes, whereas the introduction of the expression "following a transformation of their use" allows the problem of mixed objects to be solved; these are presumed to be non-military to the extent that they are not transformed for military use (see Chap. 4). Thus, all these objects will be presumed to be non-military until otherwise shown. Such an observation would in itself depend on the different procedures in accordance with the protection provided for the objects in question (see Chap. 7).

Finally, the author of the attack should take account of an objective situation by considering only the military character of objects which directly assist the adversary's military effort (the party suffering the attack).

The second paragraph deals with an exemplary list of non-military objects which may be considered as being the most typical. "Houses and constructions which shelter the civilian population or which are used by it" is exclusively meant to serve this list, whereas "foodstuffs and food producing areas, water sources and tables" are highly useful and sometimes vital to it, but also has some importance for military personnel. It is also the reason why, from a humanitarian point of view, use has been made, with regard to non-military objects in general, of the

terms "necessarily or essentially designed for the use of the civilian population", in the first paragraph of this proposal 73/. It goes without saying that health and safety zones, hospitals, cultural property, etc. are also non-military objects, de lege legata.

Goods essential to the survival of the civilian population will be talked about in the rule of protection.

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73/ The resolution of the Institute of International Law uses the word "mainly", whereas the Draft Resolution 2675 (XXV) uses "exclusively": the former runs the risk of being considered as too broad from the military point of view, whereas the latter is too restrictive from the humanitarian viewpoint. "Necessarily or essentially" have appeared to be more appropriate.

## Chapter 6

Protection of non-military objects1) General remarks

The rule that military operations must not be directed against non-military objects in general, in all armed conflicts, has not been expressly affirmed by a written and general provision of the law in force, but it does exist in customary law. In this connexion the experts stressed the importance of Arts. 23 g), 25 and 27 of the Hague Regulations of 1907 (see Annex III) and 33 and 53 (of Part III, Sections I and II) of the Fourth Geneva Convention of 1949 (see Annex VII). In their opinion, fully shared by the ICRC, these articles may be taken into consideration as the point of departure for a possible development.

Moreover, another difference with the general protection given to the civilian population, non-military objects in general are not mentioned in the international resolutions often quoted 74/.

In the view of many experts, the protection of non-military objects may be developed 75/, but on condition that account is taken of the following idea : non-military objects do not deserve protection in themselves, but only as regards the importance which they have for the civilian population. From this consideration comes the idea that general protection which it might be necessary to accord them, or confirm, would not be as extensive as that given to the civilian population; for example, there could be no prohibition of abusive use or of reprisals, relating to

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74/ Resolution 2675 (XXV) in substantive paragraphs 5 and 6 restricts itself to saying "dwellings and other installations which are used only by civilian populations" and to property under special protection ( hospital zones, etc.) (See Annex XI).

75/ Moreover on the basis of work done, and the resolution taken by the Institute of International Law, which were mentioned in the questionnaire addressed to the experts.

non-military objects in general, as was done previously for civilian populations. Some experts felt that it would have to be enough to grant special protection to certain categories of non-military objects (such as installations containing dangerous forces, undefended places and cities under special protection) 76/.

As one has seen above, these two directions (development of general and special protection) may be conceived conjointly without obstructing each other, naturally under the condition that the rules of special protection are not multiplied in an exaggerated manner. Consequently, this chapter is composed of two separate parts, the first relating to the general protection of non-military objects as a whole and the second to the special protection of certain categories of non-military objects.

## 2) General protection of non-military objects

As regards the scope of the norm of general protection, reference can be made back to the considerations described in Chap. 3, Fig. 2, a), which also holds good for the subject of non-military objects, de lege lata.

As regards the risks to which non-military objects are exposed, the two categories mentioned above are met with : firstly, the risk of direct attacks, all the greater at the moment for non-military objects in general since the norm of general protection is badly established and, secondly that of indirect attacks which can be illicit by virtue of the precautions to be taken in order to spare the civilian population. De lege ferenda, it would seem that the question of indirect attacks can only be examined in connexion with certain categories of non-military objects.

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76/ See above Chap. 3, below Fig. 3), and Title III, Chap.1.

As regards the character of the norm of general protection, the considerations developed in Chapter 3, with respect to the protection of the civilian population, are not valid. The notion that it is forbidden for the author of the attack to direct it directly against non-military objects as such seems to have already been contested by some and with even better reason, that of abusive use of non-military objects 77/. Significantly, Art. 28 of the Fourth Geneva Convention, relating to abusive use, mentions only persons and not property 78/. It would seem appropriate therefore, to tackle the problems of abusive use and reprisals from the point of view of the special protection enjoyed by certain specific categories and from that of precautions (see Chap. 7).

With respect to the rights and duties of the Parties to the conflict relating to non-military objects in general (respect and safeguard), they are not, or would not be, the same as those relating to civilians and this question is not, at the present stage, familiar enough, nor developed enough for a reasonable proposal to be made.

#### Concrete proposal by the ICRC

In the opinion of the ICRC, confirmed by the opinions expressed by a large number of experts consulted in 1970, a basic rule affirming the general protection of non-military objects in the draft protocol should be envisaged, following on from the principle expressed in Arts. 23 g), 25 and 27 of the Hague Convention of 1907, and in Arts. 33 and 53 of the Fourth Geneva Convention of 1949.

"Non-military objects which are necessarily or essentially designed for the use of civilian population enjoy a general protection against the dangers arising from military operations. They should not, in particular,

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77/ See above, considerations relating to mixed objects and objectives.

78/ Contrary to Art. 33 of the same Convention.

be made the object of attacks directly launched against them, unless they are used mainly in support of the military effort.

Among non-military objects, those indispensable to the survival of the civilian population must be neither destroyed, nor damaged, nor be made the object of reprisals in as much as the survival of the civilian population would be threatened".

### Commentary

By comparing this draft provision, in a general way, with that concerning the protection of the civilian population, it will be seen that there are several differences.

In the first paragraph, the principle of protection concerns only the respect of non-military objects which is incumbent upon the author of the attack, and not the safeguard of non-military objects which is the responsibility of the party who may suffer the attack. This second aspect may not be dealt with here, except as regards the special protection of certain categories of non-military objects (de lege lata, the prohibition of the abusive exposure of hospitals or of other protected property is not questioned). The restriction, at the end of this paragraph - mutatis mutandis - is homologous with that relating to civilians linked to the military effort. The only difference between the treatment of "civilians linked to the military effort" and that of non-military objects, is that the former do not run the risk of an attack directed against them, whereas mixed objectives, in the broadest sense, run this risk, under the circumstances described above.

The second paragraph mentions a group of non-military objects which should enjoy reinforced protection, because they represent a vital interest for the civilian population.

It should be pointed out that the formula "as long as the survival of the civilian population should be threatened" still allows the parties to the conflict a certain liberty of appreciation of the situation, which, of course, they should not abuse. These non-military objects can be, though not necessarily so, those mentioned in paragraph 2 of the definition, by way of example.

3) Special protection of certain categories of non-military objects

a. General remarks

It can also be asserted that, grosso modo, the origins of the special protection given to certain non-military objects are the same as those of the protection given to certain categories of persons. Reference can be made here to Chap. 3, para. 3 a. The quoting of a few examples should suffice, such as hospitals (particularly Arts. 18 and 19 of the Fourth Geneva Convention of 1949), the neutralized zones (Art. 15 of the Fourth Geneva Convention of 1949), undefended areas (Art. 25 of the Hague Convention and Arts. 1 to 3 of the IXth Hague Convention of 1907), and cultural property under special protection (Art. 8 of the Convention on Cultural Property of 1954) etc.

As regards the scope of protection, reference will be made as well to the considerations set out above relating to the protection of certain categories of persons. Theoretically, the special protection to be given to certain persons or certain objects is not necessarily linked to personal description or notification measures. These measures, in most cases have only a declaration character of the protection and, in practice, seek to facilitate it. De lege ferenda, these measures can be envisaged as having a constitutive effect on special protection, particularly for areas under particular protection (see Part III, Chap. 1).

Moreover, non-military objects under special protection are not guaranteed against the indirect risk of attacks launched against military objectives. Existing legislation provides, in this connexion, "active" and especially "passive" precautions. It must also be mentioned that, in certain cases, particularly in those of hospitals and cultural property (Art. 19 of the Fourth Convention and Art. 11 of the Convention on Cultural Property, respectively) there exists a procedure for the withdrawal of protection 79/, when objects enjoying special

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79/ The Conv. on Cultural Prop. of 1954, speaks of the procedure of the "withdrawal of immunity", a term which has not been retained for reasons already given.

protection are used to perpetrate acts which are harmful to the enemy, quite apart from humanitarian duties or reasons for giving protection. De lege ferenda, it might be advisable to consider introducing this idea of warning for all withdrawal of special protection in well defined and specific cases.

As regards the rights and duties of the Parties to the conflict relating to certain non-military objects, it can be said that they vary according to the particular case. It is often a question of specific precautions which are incumbent upon the party which controls these objects. With respect to both persons and objects, the Party that abuses special protection incurs a grave risk, because he can engender a systematic violation on the part of the adversary.

b. Case in point

Various categories of non-military objects have been suggested as warranting special protection de lege ferenda by several of the experts consulted.

i. Health establishments, units and transport

See Document VII on this subject.

ii. Objects indispensable to the survival of the civilian population

Some experts felt that the special protection of certain property indispensable for the survival of the civilian population could be envisaged, which could be made the object of personal description and notification measures. They thought, for example, of grain silos and water reservoirs. In the opinion of the ICRC, it would seem to be both difficult and dangerous at the present time to specify objects which are indispensable for the survival of the civilian population, since these vary considerably according to the region of the world, the habits of the people, etc. The ICRC preferred to mention the objects indispensable for the survival of the civilian population in the provision relating to general protection. This provision would be expanded to include these categories of objects. It may be, however, that some experts will want to make some proposals on this subject.

iii. Areas under special protection

See Title III, Chap. 1.

iv. Installations containing dangerous forces

Certain experts felt that it would be convenient to take up the former Art. 17 of the Draft Rules, thinking chiefly of the protection of hydro-electric dams, nuclear power stations or dykes. Some of the experts pointed out that apart from the terrible short-term effects that the destruction of such installations would have on the civilian population, the medium and long-term effects would be catastrophic for the economies of some countries, particularly the countries in course of development.

The idea of introducing the withdrawal of protection, de lege ferenda, may be taken up, not only for direct risks but also for indirect ones. Nevertheless, the ICRC would like to know the opinions of governmental experts on this subject and considers it sufficient, in the interim, to submit the proposal which appeared in the old Art. 17 of the Draft Rules mentioned above.

Concrete Proposals by the ICRC

Having regard to the above-mentioned considerations, the ICRC feels that it would be worthwhile to introduce the following two proposals into the basic rules of the Protocol relating to the protection of the civilian population in armed conflicts :

Special protection : general remarks

"Non-military objects which are accorded special protection by the law in force, shall not be used, by their presence, to render certain points or areas immune from military operations.

They may not be made the object of reprisals."

Commentary

This provision supplements that relative to the general protection of non-military objects, in which it was not deemed advisable, or even possible, to prohibit the abusive use of non-military objects for the reasons given. It also supplements it with regard to the prohibition on reprisals. It has already been intended to apply to certain non-military objects (hospitals, cultural property, etc.) but it is not always expressed in an explicit manner for other objects under special protection. This idea, moreover, does not go as far as Art. 33 of the Fourth Geneva Convention of 1949, which prohibits reprisals taken against the property of protected persons, even where property not enjoying special protection is involved. The recommendation that the Parties to the conflict have recourse to the warning in case of the abusive use of property under special protection could also be introduced.

Installations containing dangerous forces

"So as to spare the civilian population from the dangers which may result from the destruction of constructions and installations - such as hydro-electric dams, nuclear power stations and dykes - following the release of natural or artificial elements, the interested States or Parties are invited :

- a) to agree on a special procedure, in time of peace whereby a general protection may be assured, in all circumstances, to such of these installations as are designed for essentially peaceful purposes;
- b) to agree, during periods of conflict, on granting a special protection - possibly taking existing legal provisions as a basis - to such of these installations whose activity does not have any, or no longer has any, relationship with the conduct of military operations.

The preceding provisions do not discharge the Parties to the conflict from fulfilling their obligations to take the precautions laid down in the present rules, and, particularly in Arts.... and ... in any way".

Commentary

This special protection can be reinforced by a provision introducing the warning with regard to direct risks and, perhaps, also indirect risks. In this last hypothesis, the term "immunity" could be introduced.

## Chapter 7

Precautions to be taken to spare the civilian  
population and non-military objects

1) General remarks

Having regard to the experience gained of armed conflicts, and bearing in mind the considerations set out in the preceding chapters, it may be doubted that the prohibition on attacking the civilian population and non-military objects as such is sufficient. It must also be borne in mind that, in addition, steps must be taken to envisage the taking of precautions in their favour, in case of an attack on a military objective.

The need for such precautions has been affirmed by publicists for a long time, but without being expressed in a very precise manner in the provisions of international law in force. Reference may be made, for example to Art. 27 of The Hague Regulations of 1907 (see Annex III) 80/.

In its memorandum on the protection of civilian populations against the dangers of indiscriminate warfare, of 19 May 1967 (see Annex XX), the ICRC gave summary review of the rules of international law in force and pointed out, in particular, the following :

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80/ This article provides : "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the same time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand".

"Another rule deriving from the general norm, is that belligerents shall take every precaution to reduce to a minimum the damage inflicted on non-combatants during attacks against military objectives...

... in an official resolution of 30 September 1938, the League of Nations considered it fundamental and it has been given effect in the instructions which many countries have issued to their air forces.

The precautions to which allusion is made would include, for the attacking side, the careful choice and identification of military objectives, precision in attack, abstention from target-area bombing (unless the area is almost exclusively military), respect for and abstention from attack on civil defence organizations : the adversary being attacked would take the precaution of evacuating the population from the vicinity of military objectives".

This quotation leads us to make a distinction : the term "active" precautions may be used when referring to those that the author of the attack must take with regard to the civilian population and non-military objects of the party attacked, and the term "passive" precautions when referring to those which the party attacked must take with regard to the civilian population and non-military objects vis-a-vis the author of the attack 81/. Finally, special precautions may be envisaged with respect to the arms and means employed which in most cases represent a case in point for "active" precautions 82/.

In his second report, the Secretary-General mentions the complementary nature of the precautions to be taken by the author of the attack and by the party

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81/ This term "attack" and its derivatives is always understood in a strictly technical - military - sense and is applied to acts committed for both defensive and offensive reasons.

82/ See Title III, Chap. 3.

attacked 83/. As will be seen below, either in texts of international law in force, or in the resolutions of the United Nations, there is hardly any provision to be found with regard to general precautions to be taken in favour of the civilian population and non-military objects, but rather specific provisions relating to the precautions to be taken in favour certain persons or objects which enjoy special protection. Only resolution 2675 (XXV) (see Annex XI) asserts a general rule on this subject in its substantive paragraph 3 :

"In the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war, and all necessary precautions should be taken to avoid injury, loss or damage to the civilian populations".

On the other hand, mention may be made, among the texts which provide for precautions to be taken in favour of specific non-military elements, of Art. 18 of the Fourth Geneva Convention (see Annex VII). This article, and Art. 19 as well, clearly illustrate what can constitute such "active" and "passive" precautions 84/.

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83/ "It would seem, consequently, that if military personnel must exercise the greatest prudence and respect, to the fullest extent possible, the proper norms relating to the protection of the civilian population in all circumstances, the most effective manner of reducing or eliminating the risks run by the civilian population would consist of making a systematic effort, not to allow civilians into areas where they would run the risk of being exposed to the dangers described above".

Secretary-General's report A/8052, para. 32.

84/ Care must be exercised not to confuse the term "precautions" with that of "measures"; the former concerning a concept of law and the latter concerning a concept of fact. Thus, "active" and "passive" precautions may both consist of active measures (to do something) or passive ones (not to do something). In this way, Art. 18 of the Fourth Geneva Convention of 1949 para. 3, provides an active measure : the marking of a hospital by means of an emblem, whereas in para. 5, a passive measure is provided for : do not situate hospitals close to military objectives. These two measures, active and passive, constitute "passive" precautions because both concern the party attacked.

2) "Active" precautions

The concept of "active" precautions, contained in Art. 27 of The Hague Convention of 1907 and in Art. 5 of the IXth Hague Convention of 1907, was included in the Draft Rules concerning the Control of Wireless Telegraphy in Time of War and Air Warfare which was never adopted (see Annex XXII).

Before considering four specific principles, among the "active" precautions, which the ICRC has always stressed, although it was unable to get them adopted in practice, attention may also be given to the general rule expressed in Art. 22 of The Hague Convention of 1907 (see Annexes II and III), and included in resolutions XXVIII of Vienna (see Annex XII) and 2444 (XXIII) (see Annex IX) :

"That the right of the Parties to a conflict to adopt means of injuring the enemy is not unlimited".

First of all, the general rule relating to precautions intends that the author of the attack should do everything which can be expected of him to spare the civilian population and non-military objects and, consequently, to restrict his attacks to military objectives alone 85/. The following four principles represent the complementary and indispensable measures.

a) Proportionality : In its appeal made in 1940, the ICRC drew the attention of the belligerents to the principle that attacks on military objectives should not entail the risk of causing harm to civilian populations, out of proportion to the estimated military advantage. Generally accepted by customary law, this principle is not expressly asserted within a general formula included in a written norm of international law, but only with regard to the use of arms, as for example in Art. 23 e) of The Hague Regulations of 1907 (see Annex III) 86/.

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85/ The principle was included in the concrete proposal relating to military objectives - see Chap. 5, 2).

86/ This article provides : "In addition to the prohibitions provided by special Conventions, it is especially forbidden : to employ arms, projectiles, or material calculated to cause unnecessary suffering..."

The ICRC included the conception of this norm, but given it a very general character, in its Draft Rules 87/.

b) Identification : In the appeal referred to above, the ICRC also asserted this important principle, according to which military objectives must be identified as such, before an attack is made. On the subject of this principle, the same observations can be made as previously; that is, to recall that the ICRC included this idea in its Draft Rules 88/. The Secretary-General also recommends it in his minimum rules, contained in his second report 89/.

c) Warning : Contrary to the foregoing principle, this is explicitly affirmed by written norms of international law, but with regard to specific cases. For example, reference can be made to Arts. 2 and 6 of the IXth Hague Convention of 1907 (see Annex IV), Art. 26 of The Hague Convention of 1907 (see Annex III), Art. 19 of the Fourth Geneva Convention of 1949 (see Annex VII), Art. 11, 1) of The Hague Convention on the protection of cultural property (see Annex VIII).

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87/ Article 8 b) of this Draft provides : "The person responsible for ordering or launching an attack shall, first of all : ... take into account the loss and destruction which attack, even if carried out with the precautions prescribed under Art. 9, is liable to inflict upon the civilian population. He is required to refrain from the attack if, after due consideration, it is apparent that the loss and destruction would be disproportionate to the military advantage anticipated".

88/ Article 8 a) of these Rules provides : "The person responsible for ordering or launching an attack shall ... make sure that the objective, or objectives, to be attacked are military objectives within the meaning of the present rules and are duly identified...".

89/ "The obligation upon the person or persons who gives (give) the order for, or launches, and attack, is to ensure that the objective attacked is not the civilian population or dwellings, installations or means of transport which are reserved for the exclusive use of this population or occupied by same".

Secretary-General's report A/8052, para. 42, e).

Nevertheless, the norms that affirm this principle do not always have the same scope 90/. On the other hand, there is no general rule relating to the protection of the civilian population as a whole, such as the ICRC had envisaged in its Draft Rules 91/.

d) Choice of arms and means of inflicting injury on

the enemy : Only a brief mention will be made of this rule, dealt with in more detail in Title III, Chap. 3; it originates directly from Art. 22 of The Hague Regulations of 1907 and has also been included in the Draft Rules 92/. The Secretary-General, in his second report, included this principle in one of the minimum rules 93/.

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90/ By comparing Art. 11, 1) of The Hague Convention on the protection of cultural property, with Art. 19 of the Fourth Geneva Convention, both of which provide for a warning to be given for the claiming of immunity for non-military objects enjoying special protection, it is realized that the first of these provisions is of a relative character only, expressed by the words "each time that it may....", whereas the second provision is of a more absolute nature. See the Commentary on the Geneva Conventions, as from Art. 19, Fourth Convention.

91/ Article 8, c) of these Draft Rules provides : "The person responsible for ordering or launching an attack shall, first of all... warn the civilian population in jeopardy, whenever circumstances allow, to enable it to take shelter".

92/ Article 9 of the Draft Rules provides : "All possible precautions shall be taken, both in the choice of the weapons and methods to be used and in the carrying out of an attack, to ensure that no losses or damage are caused to the civilian population in the vicinity of the objective, or to its dwellings, or that such losses or damage are at least reduced to a minimum".

93/ See Secretary-General's report A/8052, para. 42, f). Letter i) of the same paragraph, in the same report, concerns a blockade, which is nothing more than one of the cases in point where the principle expressed under f) is applied.

Opinion of the experts

During the consultations in 1970, the ICRC asked the experts if these various types of precautions could be applied in military practice and if it were worthwhile to reaffirm them and specify them in a real legal instrument which would affirm them explicitly. In a general sense, almost all the experts approved the concepts of proportionality, identification and the choice of weapons and the means of inflicting injury on the enemy, such as they appear in the articles of the Draft Rules mentioned above, without making hardly any reservations as to the wording of these articles 94/.

The experts as a whole felt that the conception of "warning" had fallen into disuse and that it could not be used in a general formula in favour of the civilian population and non-military objects. Only a very small minority felt the opposite. On the other hand, they were all agreed in saying that the warning was still valid when it represented one of the means for the withdrawal of the special protection which are enjoyed by certain persons or certain non-military objects, within the law in force. They also felt that, possibly, this concept could be used in developing the law 95/.

Again, the experts were divided on the manner in which to incorporate these three (or four) different principles into a real legal instrument. For some, the principles of proportionality and choice of weapons and means to inflict injury on the enemy, were more in favour of military necessity than the other principles. For others, the principles of humanity and necessity, more or less counterbalanced each other in favour or in disfavour of the civilian population and non-military objects in each of the principles expressed. For example, they pointed

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94/ Especially with regard to the phrase : "The person who orders or launches an attack"; this formula should be replaced by another, of a more general character, such as "when an attack is ordered or launched...".

95/ Article 11 of The Hague Convention on cultural property (see Annex VIII) refers to the "withdrawal of immunity"; see, concerning this latter term, the considerations given under footnote 45/.

out that in the rule of identification, humanitarian interest (to spare the civilian population and non-military objects) and military interest (to save munitions), coincided. The experts felt, therefore, that the same importance should be devoted to both these principles.

### Concrete proposal by the ICRC

To ensure greater protection for the civilian population and non-military objects designed for its use, the ICRC feels the necessity for inserting a basic rule in the draft protocol (below, 1) and several rules of application in its regulation of execution (below, 2).

#### 1. Basic rules relating to "active" precautions

"When a Party to a conflict orders or launches an attack, he shall take all necessary steps to spare the civilian population and individuals, and non-military objects designed for their use (or : non-military objects which are indispensable for their survival).

In this connection, the persons mentioned in Art. ... shall benefit from the presumption that they belong to the civilian population; similarly, non-military objects mentioned in Art. ... shall benefit from the presumption that they have no military character whatsoever".

#### 2. Rules of application

##### a) Identification

"Those who order or launch an attack must ensure that the objective or objectives concerned are not civilian elements, but are identified as military objectives".

b) Warning

"Those who order or launch an attack, must warn the civilian population threatened, whenever the circumstances permit, so that it may find shelter".

c) Proportionality

"Those who order or launch an attack must take into consideration the losses or damage which the attack, even carried out with the precautions laid down in Arts. .... may inflict on the civilian population and non-military objects designed for its use (or : non-military objects indispensable to its survival).

When there is a choice between several objectives which will obtain the same military advantage, the choice shall fall upon that which entails the least danger to the civilian population and non-military objectives designed for its use (or : which are indispensable to its survival).

The attack shall be abandoned if it is found that the probable damage would be disproportionate to the military advantage anticipated".

d) Choice of weapons and methods of inflicting injury on the enemy

"Those who order or launch an attack, must take the necessary precautions in the choice of weapons and methods of attack, as well as in the execution of such an attack, so as not to cause losses or damage (or : at least to reduce them to a minimum) to the civilian population or individuals, or to non-military objectives designed for their use ( or : non-military objects indispensable to their survival), in the vicinity of a military objective.

The attack shall be abandoned, or suspended, if it appears that the conditions laid down in the present article cannot be respected".

### Commentary

Having regard to the preceding considerations, the following remarks should be sufficient :

Re: 1. This provision, which should appear among the basic rules, complements the rules of protection expressed in the concrete proposals in the preceding chapters; it should indicate the need for the Parties to the conflict to take "active" precautions which would be specified in the rules of application. It would affirm the principle of the presumption in favour of civilians and non-military objects designed for their use (or which are indispensable to their survival).

This conception originates from Art. 5, para. 2 of the Third Geneva Convention of 1949 96/ which provides for a presumption in favour of those who are not known to be regular military personnel; in case of doubt, they are to be treated as prisoners of war.

A fortiori, de lege ferenda, a presumption might also be made in favour of those who are not known to be civilians; in case of doubt, they would be treated as civilians.

It follows from this general norm on "active" precautions that it is forbidden to attack persons or objects, unless they are genuine military objectives; in turn, the rule of identification follows from this (see below, 2, a).

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96/ This paragraph provides : "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal".

Re: 1 a) Identification

It is understood that the term "civilian elements" refers firstly to the civilian population, then to non-military objects designed for its use (or : non-military objects which are indispensable to its survival); the conception of military objectives would also be specified in the regulation of execution, as has already been seen in Chap. 5, 2).

b) Warning

The phrase "each time the circumstances permit..." is a concession to the principle of military necessity, without which the experts feel that the principle of warning would have no chance of being adopted and affirmed in a true legal instrument.

c) Proportionality

This principle, unfortunately, makes large concessions in favour of military necessity which also appeared to be inevitable to the experts consulted in 1970. It also contains the notion of the choice of the lesser evil.

d) Choice of weapons

This principle could possibly be made more specific and expanded, as will be seen in Title III, Chap. 3; it is obvious that it could not yet confer absolute immunity against the side effects of certain weapons upon the civilian population.

3) "Passive" precautions

This matter is more delicate, because the publicists are divided in the opinions on the question of knowing if The Hague Conventions apply to the belligerents' relations with their own civilian populations and non-

military objects designed for their use. The same divergence of opinion revealed itself with regard to the application of the principles expressed in resolution 2444 (XXIII). Consequently, when the ICRC consulted the experts in 1954 on this problem, the latter never questioned the principle that by virtue of The Hague Convention of 1907, the precautions to be taken by the author of the attack with regard to certain buildings, depend on the measures of notification taken by the State responsible for the buildings. They stressed that the same applied to installations protected by the Geneva Conventions of 1949 and further pointed out that The Hague Convention of 1954, relating to the protection of cultural property, make a clear distinction between respect for cultural property ("active" precautions, to be taken by the author of the attack) and the safeguarding of cultural property ("passive" precautions, to be taken by the Party attacked). Here again, however, written norms of international law are rare, and those of a general nature are almost non-existent. As has been seen from the examples given in paragraph 1 of this chapter, it is still the case of persons or non-military objects, determined in a casuistic manner, which is in question. There are two ways of safeguarding the civilian population and non-military objects designed for its use that are within the power of the particular Party to the conflict : one consists of removing the civilian population and non-military objects from the vicinity of military objectives and the other is not to situate military objectives in the immediate vicinity of the civilian population and non-military objects. These two methods were recommended in Art. 11 of the Draft Rules 97/.

It is noted that these two ideas are generally accepted and that they appear primarily among the minimum rules recommended by the Secretary-General in his second

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97/ This article provides :

"The Parties to the conflict shall, so far as possible, take all necessary steps to protect the civilian population subject to their authority from the dangers to which they would be exposed in an attack - in particular by removing them from the vicinity of military objectives and from threatened areas. However, the rights conferred upon the population in the event of transfer or evacuation under Article 49 of the Fourth Geneva Convention of 12 August 1949 are expressly reserved".

report 98/. The ICRC felt it to be essential to include, in a general form, the obligation upon the Parties to the conflict to take "passive" precautions, because this obligation is the inevitable counterpart to "active" precautions which are demanded of the author of the attack 99/. As the Commentary specifies as well, with respect to para. 2 of Art. 11 of the Draft Rules, this paragraph is essentially one of recommendation. Moreover, it is still not forbidden for the party attacked, as some people have pointed out to have recourse, under certain circumstances, to the civilian population - as in the case of resistance or a levy "en masse", or again, to use non-military objects, thus changing their nature. If the party concerned does this, the action does not become illicit, but its consequence is that the civilian population and non-military objects lose their protection, since they become combatant and military objectives respectively.

#### Concrete proposal by the ICRC

For the reasons given above, with respect to Art. 11 of the Draft Rules, the ICRC is still convinced of the opportuneness of a provision relating to "passive" precautions, mainly because there is no written norm of general scope in existing law. This provision would be inserted in the basic rules of the Draft Protocol on the protection of the civilian population in armed conflicts.

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98/ See Secretary-General's report A/8052, para. 42, g) and h).

99/ The Commentary on the Draft Rules relating to this, also specifies : "In the interests of the civilian population, it is essential that the efforts demanded of the attacking side to spare civilians should be met by the enemy with measures facilitating such efforts". This rule should not be applied solely to relations between the States and their nationals, but should also constitute a precious safeguard for the inhabitants of occupied territory. The mention of Art. 49 of the Fourth Geneva Convention of 1949 was designed, in para. 1, to avoid the abusive interpretation of the rule, for the purpose of effecting transfers of the civilian population.

"The Parties to the conflict shall take, so far as possible, all necessary steps to protect the civilian population and individuals, and the non-military objects designed for their use (or : indispensable to their survival), which are subject to the authority of the Parties, from the dangers arising from military operations.

They shall make every effort, either to remove military objectives from threatened areas - subject to the provisions of Art. 49 of the Fourth Geneva Convention of 1949 - or to avoid the permanent presence of military objectives in towns or other densely populated areas".

#### Commentary

This provision, which is inspired largely by the former Art. 11 of the Draft Rules, is a more simple formula for the different measures which can be undertaken by the Party attacked as part of the "passive" precautions; it is also broader in scope than Art. 11 in that it mentions non-military objects designed for the use of the civilian population (or : non-military objects indispensable to its survival). For the remainder, reference will be made to the Commentary on the Draft Rules on Art. 11 (see Annex XIX bis).

TITLE IIISPECIAL QUESTIONS RELATING TO THE PROTECTION  
OF THE CIVILIAN POPULATION IN ARMED CONFLICT

## Chapter 1

Zones under particular protection 100/1) General remarks

The character of zones under particular protection has a dual aspect 101/ : firstly, these zones represent a precise means of obtaining greater protection for the civilian population and, secondly, these zones may, in themselves, be considered non-military objects.

The establishment of such zones in general raises two problems, viz., firstly, should these zones be established in time of peace or in time of war; secondly, should the recognition of these zones be undertaken following an explicit agreement, or by means of the mere tacit application of the provisions concerned.

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100/ The phrase "zones under particular protection" is used in place of "zones of refuge" to demonstrate that it is not only zones prepared in time of peace, nor zones simply situated outside areas of combat, which can be made subject to special protection.

101/ See Commentary on IVth Geneva Con., 1949, re: Arts. 14 and 15.

As regards the creation of zones of refuge for the civilian population, set up in peace time, reference will be made to the important study and development undertaken by the Secretary-General of the United Nations in his second report 102/, which recommends, in particular, a solution analogous to that expressed in the Convention on Cultural Property of 1954.

a. Difference between zones protecting persons and those protecting property

In the law in force, the first step was the creation of zones to reinforce the protection of certain categories of the civilian population (see Arts. 14 and 15 of the Fourth Geneva Convention of 1949) (see Annex VII), then zones of refuge were envisaged to reinforce the protection of certain categories of non-military objects (such as cultural property, see Art. 8 et seq. on the Convention on Cultural Property of 1954) (see Annex VIII).

For the reasons given above, the ICRC will restrict itself to proposing the development of the law in force, to reinforce the protection of the civilian population. The ICRC takes as a basis the recent resolution 2675 (XXV), particularly substantive paragraph 6 (see Annex XI). For exclusively technical reasons, reference will also be made, on occasion, to the principles relating to cultural property, although fundamental questions are raised rather differently for the civilian population or cultural property.

The Convention on Cultural Property of 1954 has, as its main objective, the preparation of protection for certain categories of cultural property in time of peace (see Art. 3 of this Convention). The establishment, in time of peace, of zones which would protect certain categories of the civilian population cannot be undertaken so easily for several reasons : the establishment of zones for the civilian population depends on strategic,

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102/ See Secretary-General's report A/8052, paras. 73 to 87.

financial and human problems (particularly the separation of families) which bear no comparison with problems concerning the installation of safety zones for cultural property.

b. Difference between zones protecting the civilian population as a whole and those protecting certain categories of individuals

For the sake of convenience, the term "zones" in its broadest sense, will be taken to mean all areas in which civilians, or certain categories of civilians, enjoy effective and reinforced protection. To keep matters simple, the undefended areas mentioned in Art. 25 of the Hague Regulations and in Arts. 1 to 3 of the IXth Hague Convention of 1907, may be considered as zones which protect the civilian population as a whole, whereas hospital and safety zones, as well as neutralized zones (Arts. 14 and 15 of the Fourth Geneva Convention of 1949) protect only certain individuals.

These latter zones are at present intended for the benefit of specific categories of persons (see Title II, chapter 3, Fig. 3, above). These provisions are intended to reinforce the protection of certain categories of the civilian population against the dangers arising from military operations in general and against the dangers arising from aerial bombardments and long-range weapons. Nevertheless, the nature of neutralized zones (Art. 15) differs from that of hospital and safety zones (Art. 14), in that neutralized zones are always established during periods of armed conflict, in the very areas where the conflict takes place, whereas hospital zones may be established in time of peace. It should also be pointed out, and stressed, that Art. 15 is the fruit of certain practical measures adopted throughout the history of modern warfare, such as the neutralized zones established in Spain (Madrid, 1937), in China (Shanghai, 1937) and in Palestine (Jerusalem, 1948). It may be added that Art. 14, which concerns hospital zones and localities, provides for all methods by which these zones can be established in time of peace, particularly in Annex No. 1 to the Fourth Convention, which is not yet the case with Art. 15, which concerns neutralized zones.

The two categories of zones mentioned in the Fourth Convention thus both provide for a limitation as to the beneficiaries and entail, possibly, their removal to these zones during periods of armed conflict. These zones very often present difficulties, because they must always have a large capacity to accommodate people, as compared to their indigenous population. These difficulties were, moreover, pointed out by the experts consulted by the ICRC in 1970 and they emphasized the need to provide for other categories of zone, so as to ensure the protection of the civilian population as a whole and, in any case, to take the provisions of the Hague Conventions of 1907 as a basis.

It was thus that the ICRC, taking the provisions of existing law as a basis, had the idea of setting up an additional system of neutralization which could intervene during the course of armed conflicts, and even within the actual combat zone itself, but without restriction as to those benefitting from it. This type of neutralization in favour of the civilian population as a whole had already been contained in the provisions of the Hague Conventions of 1907 relating to undefended areas. It was thus a question of taking these ideas and developing them by adapting them to all situations and to all types of modern armed conflict.

c. Establishment of zones in time of peace or during armed conflicts

Art. 14 of the Fourth Geneva Convention of 1949 was conceived for zones to be established in time of peace, since their main purpose is to provide shelter from the effects of military operations for the wounded, sick and infirm, elderly persons, children aged under 15 years, expectant mothers and the mothers of children aged under 7 years. This purpose, which has never been contested, in principle, by military or political authorities, still raises the question of whether the establishment of such zones in time of peace is compatible with defensive preparations - as regards the military authorities - or with the financial resources of the country concerned - as regards the political authorities. The experts consulted by the ICRC in 1970 overwhelmingly showed their scepticism with respect to the establishment of any such zones in time of peace.

In 1952, the ICRC noted, after having consulted the National Red Cross Societies by means of a circular No. 398 (see Annex XVIII), that the governments were rather reticent with regard to the preparation of zones in time of peace. The experience gained from the establishment of zones of refuge for cultural property in time of peace, according to the Convention of 1954, is too limited for definite conclusions to be drawn 103/. This attitude on the part of the governments is probably explained by the fact that these questions are closely linked to those of security and national defence. Apart from this difficulty of a military nature, there are others, for example those of a financial nature : it must not be forgotten that many countries have already started to prepare a costly system of protection by creating civil defence organizations (see below, second part) which are intended, to a certain extent, to achieve the same results as the establishment of zones in time of peace. These countries no longer seem to be ready to spend large sums to establish such zones whose usefulness has not been sufficiently demonstrated during the course of armed conflicts.

For all these reasons, the ICRC feels that, at the present time, it should support and develop the concept of systems of neutralization during the course of armed conflicts, which would not entail the removal of the civilian population and for which preparations could, possibly, be made in time of peace. Of course, all procedures and conditions of recognition for these zones established during periods of armed conflict should appear in a model agreement containing conventional provisions and based on established legal procedures. Thus, the efforts now being made to establish systems of neutralization in periods of armed conflict, are subject

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103/ According to "information on the implementation of the Convention on the Protection of Cultural Property in Armed Conflicts", published by UNESCO in 1970 - page 7 of the introduction - "The following cultural property has been included in the register at the request of the interested State and on the dates mentioned below :

- 18 January 1960 : registration of the whole of the State of Vatican City, at the request of the Holy See.
- 17 November 1967 : a refuge designed to shelter cultural property, at the request of Austria.
- 12 May 1969 : six refuges, at the request of the Netherlands."

to two considerations: firstly, to adapt the concept of neutralization as expressed in Art. 15 of the Fourth Geneva Convention of 1949 (which provides for the protection of certain categories of the civilian population and which could entail the evacuation of persons) and, secondly - and above all - to develop and adapt the conception of neutralization for whole localities and urban areas (which would permit the protection of the civilian population as a whole to be reinforced, without having recourse to removal, such as it is expressed in Art. 25 of the Hague Regulations of 1907 and Arts. 1 and 3 of the IXth Hague Convention of 1907, relating to undefended areas).

d. Establishment and recognition of zones

The question arises, with respect to these different systems of neutralization - de lege ferenda as to whether the establishment and recognition of zones can be set up by means of a model agreement, a registration subject to contestation, or the tacit and reciprocal application of conventional provision(s).

These different procedures which may be applied where cases of de lege ferenda are envisaged, already exist in the law. With regard to the establishment of neutralized zones (Art. 15 of the Fourth Geneva Convention of 1949), a bilateral agreement is provided for; with regard to the recognition of centres containing monuments, a registration is provided for (Art. 8, para. 6 of the Convention on Cultural Property of 1954); finally, with regard to the recognition of undefended areas, the tacit application of conventional provisions is foreseen (Art. 25 of the Hague Regulations of 1907 and Arts. 1 to 3 of the IXth Hague Convention of 1907).

Agreements relating to the neutralization of zones may not be concluded through usual channels during periods of armed conflict, but they should be able to be concluded by competent persons in the area of contact with military forces, because the time which is elapsing is working against the civilian population.

e. Control of conditions of establishment and utilisation of zones

Conditions applying to the establishment and utilisation of the various zones would be formulated on specific basis and each zone would be subject to objective and impartial control 104/. Thus, in order to find a solution to these questions, de lege ferenda, it might be worthwhile to take a lead from the relative provisions of the law in force.

f. Nature and scope of the protection to be given to zones under special protection

This question has already been dealt with in Title II, Chap. 6, para. 3 of the present document 105/. Nevertheless, one very general reservation that the ICRC has constantly made with regard to any zone, either existing or to be established, must be referred to and stressed here : it is obvious that the special protection given to a zone must never weaken the general protection to be accorded to the civilian population and non-military objects, as provided by all the relative legal provisions in force. In other words, the establishment of zones must never, in any respect whatsoever, be regarded as authorizing the Parties to the conflict to launch indiscriminate attacks outside these zones.

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104/ Such control is provided for, in the law, in Annex 1 of the Fourth Geneva Conv. relating to Art. 14, and in Art. 10 of the Hague Convention of Cultural Property of 1954 and Art. 10 of its regulations.

105/ Could the indirect risk for certain zones be limited or suppressed, de lege ferenda, by means of giving a warning ?

2) Special cases of neutralizationa. Preliminary remarks

Having regard to the fact that the neutralization of any zone reserved for certain persons already exists (Art. 15 of the Fourth Geneva Convention), only two particular cases of neutralization will be examined here; that is, with regard to the civilian population, and where, therefore, no removal is involved 106/. Firstly, there is the case of undefended populated areas and, secondly, that of populated areas under special protection. It is understood that the term "areas" refers to towns, villages or other localities. Is there a difference between the former conceptions of undefended areas and open towns? In the practice no formal difference between open towns and undefended areas were made; on the contrary, the concept of the open town has superseded that of undefended areas, included in the law formulated at The Hague. This practical development of the open town, particularly during the second world war was due to the fact that Art. 25 of the Hague Regulations of 1907 and Arts. 1 to 3 of the IXth Hague Convention of 1907, no longer appeared to be adequate for aerial and strategic warfare 107/.

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106/ With regard to neutralized zones, within the meaning of Art. 15 of the Fourth Convention, the question could be raised as to whether this solution would be possible in non-international conflicts, by analogy with these provisions and whether it would be possible to draw up a model agreement, as was envisaged for Art. 14, in an annex to the Fourth Convention.

107/ With regard to Art. 16 of the Draft Rules of 1956, it was originally conceived, de lege ferenda, for purposes analogous to those of Art. 25 of the Hague Regulations of 1907 and to affirm the practice relating to the concept of the open town, which is often ambivalent. Thus, the scope of the protection which would have been conferred by Art. 16 of the Draft Rules and the conditions envisaged, were expanded in such a way that they superseded the classic conception of undefended areas within the meaning of Art. 25 of the Hague Regulations. This difference between the old concepts of undefended areas and open towns is shown mainly by the recent

(continued on next page)

With regard to Art. 25 of the Hague Regulations, many authors expressed the opinion that any site which does not constitute an obstacle to the advance of troops should not be considered as a defended area and may not be subjected to bombardment; but, on the other hand, with respect to military objectives located there, they could be destroyed individually. This latter consideration does not appear in Art. 16 of the Draft Rules of 1956, in which this risk was intentionally removed in order to achieve as broad a protection as possible.

Bearing in mind these different developments and in considering the different degrees of the non-defence of a site, according to its position within defence installations or systems, the ICRC would prefer to develop two possibilities : firstly, the basic idea of undefended populated areas should be absorbed, with reference to Art. 25 of the Hague Regulations of 1907 and enlarging its scope; secondly, the idea conceived in Art. 16 of the Draft Rules concerning the "open town" should be developed and modified so as to obtain a still broader protection. Examination will, therefore, be limited to these two possibilities : a) undefended populated areas and b) populated areas under particular protection.

b. Undefended populated areas

A remark of a terminological nature must be made here : populated areas is taken to mean - in this paragraph and the next - towns, villages and other localities. All the experts consulted by the ICRC in 1970 agreed with the need to develop Art. 25 of the Hague Regulations of 1907, by adapting it to fit all modern situations and types of armed conflict. According to them, it would be necessary to establish all functions and activities admissible within the undefended areas under consideration. For example, would the simple fact of possessing a DCA

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107/ cont. :

obligation to stop all industrial activity for military purposes - a rather stringent condition which is not absolutely necessary for the recognition of a state of non-defence.

system represent a state of defence in the case where a Party specifically declared that it would not defend this locality ? The conditions imposed on the recognition of a state of non-defence should, therefore, be studied further so as to be affirmed in new provisions; it is possible that, in the various types of conflict, conditions would vary according to the circumstances.

The recognition of the non-defence of a locality or a town, represents a kind of neutralization in the zone of combat. Such recognition should be embraced by provisions to be applied tacitly. In customary law, it has been more or less admitted that Art. 25 of the Hague Regulations of 1907 is only applicable to military operations on land and it is generally felt that its prohibition refers to all attacks, prior to occupation, on an undefended site from the moment that the site refuses to defend itself. According to some publicists, aerial bombardments 108/ would only be limited to the extent that they support ground operations (tactical operations) and that independent aerial bombardments (strategic operations) would not be covered by the said article. The Commission of Jurists instructed with studying and reporting on this revision of the laws of war 109/, specified in its Draft Rules of 1922 (see Annex XXII), Art. 24, para. 3 : "Any bombardment of cities, towns, villages, habitations and buildings which are not situated in the immediate vicinity of land forces operations, is forbidden ...". Since the application of Art. 25 of the Hague Convention has never depended on an express agreement, but rather on the recognition of a factual state by the opposing Party, it would be necessary, in developing the law, to define what the state of non-defence means with respect to modern conflicts, having regard to the relative situations and methods of modern warfare.

When the concept of undefended areas took shape, for the first time, in the Brussels Declaration of 1874, one important factor for determining whether or not there

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108/ See Chap. 2.

109/ Assembled at The Hague on 11 December 1922.

was a state of defence, was to discover if the town was fortified or not. During the first world war, this criterion was naturally replaced by the general concept of the military objective. At this epoch, a defended area assumed the character of a military objective and the difficulties inherent in this concept have been seen (see Title II, Chap. 4, 2).

With the development of aerial and strategic warfare, this notion of a military objective was arbitrarily expanded and was no longer adequate to describing a state of non-defence. During the second world war, certain customary norms were applied, which were partly absorbed by Art. 16 of the Draft Rules of 1956, to describe, the state of non-defence. They concerned mainly the evacuation of mobile military objectives and troops, as well as the non-recourse to immobile military objectives. A declaration on these two points was not always necessary.

In this connection, it should be mentioned that Art. 16 of the Draft Rules of 1956 cites other conditions as, for example, the cessation of industrial activities in support of the military effort. This last condition is not indispensable to the recognition of a state of non-defence of an area, because if this area falls into the hands of the opposing forces without any fighting having taken place, these forces will be in a position to make such activities cease or turn them to their own advantage. The only factors to be taken into consideration are those which prevent (or do not prevent) the approach of the enemy; of course, the simple fact of blowing up military objectives in a town, before evacuating troops and mobile military objectives, would not be a contradiction of a state of non-defence.

#### Concrete proposal by the ICRC

As this question stands at present, it is still not possible to formulate proposals and it will suffice to mention just a few ideas.

1. The establishment of an undefended populated area would seem to be possible only in a combat zone. To create such an area elsewhere could, moreover, weaken the general protection due to the civilian population.

2. A populated area would only be considered as being undefended if it did not offer any effective resistance to the attacks and advance of the enemy. The Party to the conflict who declines to defend a populated area would be obliged to withdraw the mobile military objectives and no longer use fixed military objectives, or, alternatively, destroy them.
3. When an undefended populated area is occupied by the enemy, its status would be reassessed and a new agreement made, even a tacit one.
4. Material conditions would have to be fulfilled, in such a way that the Parties to the conflict can prepare them in advance, without an express agreement being necessary.

c. Populated areas under particular protection

Areas under special protection is taken to mean towns, villages and other localities.

This designation was preferred to the expression "open town", which has often been employed in the past, but which has an ambivalent meaning nowadays.

The customary notion of open towns, which made its reappearance during the second world war, does not as yet have any precise meaning. The rules of The Hague Conventions were no longer adequate to cover the dangers of aerial and strategic warfare and it was thus that a new practice was adopted during this conflict. The ICRC tried to give Art. 16 of the Draft Rules of 1956 a more solid form, but not without difficulty.

It is now time, as numerous experts have said, firstly, to examine the concepts contained in Art. 16 of the Draft Rules and secondly, to draw a clear distinction between populated areas under particular protection and undefended populated areas. Three differences can be pointed out here and now. These populated areas under particular protection would be situated away from combat zones; their establishment would be undertaken following an express agreement and, within these areas, all activities carried on in support of the military effort would have to cease.

It has been seen that, in order to achieve this, the agreement of the various Parties to the conflict would be necessary. This agreement could be concluded either by means of a model convention, or by means of registration, subject to acceptance, through a procedure analogous to that contained in the Convention on Cultural Property of 1954. Populated area under particular protection could not be created in a combat zone, because this would immediately raise the question of relations with the military forces 110/. For this reason, populated areas under particular protection would be considered as a neutralization, realized principally and practically during the course of a conflict and, initially, away from any combat zone. In this way, the conditions placed upon their establishment would be more numerous than those for undefended areas, but the protection accorded to them would be proportionately greater. The request for the granting of special protection would imply, for the Party concerned, that he would expressly renounce the use of all military or mixed objectives situated with the populated area.

It now remains to examine the difference between areas under special protection (*de lege ferenda*) and safety zones (*de lege lata*). This difference is demonstrated by two considerations. Firstly, areas under special protection would be established during the course of the conflict and, secondly, it would no longer be necessary to remove certain privileged categories of the civilian population to these areas. These two types of zone would have in common the fact that they were situated away from zones of combat.

#### Concrete proposal by the ICRC

It is not yet possible, as things stand at present, to formulate proposals, so simply a few ideas will be mentioned :

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110/ See Art. 16 para. 2, b. and d. (Annex VIII).

1. The establishment of populated areas under particular protection would only be possible away from zones of combat on land.
2. The occupation of these populated areas by enemy forces would be either forbidden or made subject to stringent conditions.
3. The establishment of any populated area under particular protection would be subject to the concluding of an express agreement, or registration, which would be accepted or refused. The conditions of this agreement could be contained in a model convention whose provisions could appear either in the regulations for execution of the protocol relating to the protection of the civilian population, or in an annex.
4. The Party who requests the granting of particular protection for a populated area must, by means of a formal declaration, renounce the utilization of all military objectives and mixed objectives situated within this area.
5. All abuses alleged by the enemy should be objectively examined and a procedure similar to that expressed by Art. 19 of the Fourth Geneva Convention of 1949 or Art. 11, para. 1 of the Convention on Cultural Property of 1954, could be envisaged with respect to the withdrawal of protection.
6. Any area under particular protection should be situated, initially away from the combat zone, but if, during the course of the conflict, such an area falls within this zone, it would not automatically lose all its privileges, but only those which are specifically linked to areas under particular protection; such an area should, therefore, be able to become an undefended populated area.

## Chapter 2

Protection of the civilian population against  
certain bombardments

1) General remarks

The preceding chapters are intended to define illicit objectives and to prescribe the precautions to be taken so as to spare the civilian population and non-military objects designed for its use. But there are not only illicit objectives: there are also illicit methods and means. Illicit methods are mainly indiscriminate bombardments (that is to say, where there is no longer any distinction between military objectives, civilian populations and non-military objects) and certain methods of economic warfare (examined in Chap. 4), whereas illicit means are generally the recourse to indiscriminate weapons (certain effects of which will be mentioned in the following chapter).

Here too, reference must be made to the provisions of international law in force concerning the limitation and prohibition of certain bombardments, so as to demonstrate the possible weaknesses and the need to reinforce them by adapting them to modern situation and armed conflicts. These weaknesses become especially apparent in the regulation of aerial warfare which could include in provisions contained in the protocol relating to the protection of the civilian population in armed conflicts or in its regulations of execution, on a complementary basis.

It would appear to be possible and necessary to restrict bombardments for various reasons. Necessary, because the brake must be applied to the ever growing trend towards total war and because an answer must be given to the aspirations of humanity's present conscience; possible because such a development would seem to be possible even in certain military circles where it has been stated that the practice of indiscriminate aerial bombardment has been shown to be ineffective on the military level itself. Many experts consulted by the ICRC also

stated - and a majority of them agreed - that certain principles in the rules applicable to all situations and all kinds of armed conflict should be reaffirmed and developed.

It is obvious that, from the ICRC's point of view, all the basic rules mentioned in the preceding Title (II) should, in view of their general character, also cover the case of bombardments. Nevertheless, one may raise the question of whether these basic rules should be put in a specified form.

## 2) Validity of the legal provisions of The Hague

The principle according to which the infliction of needless suffering on the civilian population constitutes the basis of any prohibition (or limitation) of certain bombardments. This principle may be associated with another, according to which the legitimate aim of all military operations must be restricted to weakening the military forces of the enemy, also mentioned in the Declaration of St. Petersburg of 1868 (see Annex I). These two principles were included and merged into Art. 22 of the Hague Regulations of 1907 (see Annex III). This article constitutes a general rule which is expressed in Arts. 25 and 27 of the said Regulations and in Arts. 1 to 3 of the IXth Hague Convention of 1907.

Since then, there have not been any other instruments regulating in an explicit manner the conduct of land and naval bombardments. Of course, the written provisions of the law in force, particularly those of the Geneva Conventions constitute, indirectly, prohibitions or restrictions in this respect, but they do not directly refer to bombardments.

Thus, only the above-mentioned provisions of the Hague Conventions refer expressly to bombardments and they are considered as provisions of customary law, at least as regards Arts. 25 and 27 of the Hague Regulations<sup>111</sup>/.

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<sup>111</sup>/On the other hand, some experts contested the validity of the IXth Hague Convention of 1907.

Although they were formulated at a time when aviation did not yet exist, many authors feel that these rules, particularly because of the terms of Art. 25 "by whatever means", apply to all types of bombardment made possible by the creation of military aviation. Thus, on several occasions, these provisions were invoked during the second world war or in conflicts which occurred subsequently, to admonish aerial bombardments of an indiscriminate character. In customary law it is generally admitted that the aforementioned rules of the Hague Conventions retain their validity for "classic" bombardments by land or naval forces as well as for "tactical" aerial bombardments; that is to say, those which are designed to give close support to land operations.

The experts consulted by the ICRC did not contest this validity, but they stressed the fact that the rules in question have lost a good deal of their value by virtue of the technical development of weapons and means of combat - thinking, for example, of strategic bombardments, particularly by means of intercontinental ballistic missiles 112/. It also seemed preferable to them to make the major effort bear upon the establishment of rules of a general character such as they have been formulated in the preceding chapters of this document (particularly those concerning the prohibition and the limitation of attacks, as well as the precautions to be taken) and upon the special rules forbidding certain types of bombardment; these rules will be found further on.

The Draft Rules of The Hague of 1922 (see Annex XXII) represent the best effort to regulate aerial bombardments, de lege ferenda. Art. 22 of these Rules forbids aerial bombardment when it is intended to terrorize the civilian population. Art. 24, first paragraph, expresses limitations with respect to the possibility of destroying a military objective; Art. 24, third paragraph, forbids the strategic aerial bombardment of areas outside the zone of land military operations, whereas the fourth paragraph of this same article contains conditions for the tactical bombardment of areas in the vicinity of military operations on land. All these provisions are not

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112/ It must be noted that the distinction between tactical and strategic attacks is contested.

restricted to imposing certain limitations, with a view to protecting persons or property, but they do clearly fix the limits of conduct for all aerial bombardments, either tactical or strategic.

### 3) Possible supplementary precautions

#### a. General remarks

There arises the question of whether so-called "active" precautions with respect to bombardments, especially aerial ones, should be specified. Such bombardments may be indiscriminate, as is the case, for example, with the bombardments of zones of terrorism, whereas the distinction between military objectives and the civilian population is no longer respected. By virtue of the principle of distinction, in customary law, this type of bombardment is already forbidden and it does not seem necessary to specify it again.

It has been seen that distinctions are sometimes made between tactical and strategic bombardments, the latter possibly destroying whole zones behind the theatre of military operations, either to destroy the potential objectives of the enemy, or to demoralize the civilian population. In order to limit the objectives of such strategic operations, recourse may be had to another condition, which is that of immediate military advantage of which the author of the attack must take account. This criterion, which formerly constituted a factor in the definition of a military objective, could be introduced into the context of bombardments. It would impose limits on the conduct of military operations in general and strategic operations in particular. This additional condition could also be held valid for all attacks in general and not only for bombardments; it could thus supplement the "active" precautions contained in the regulations of execution in the Protocol.

#### b. Unilateral bombardment (See document VI, IV Methods of Warfare).

4) Bombardments of zones 113/

As the ICRC has already pointed out in the Commentary of the Draft Rules of 1956, this new and disquieting phenomenon is due mainly to two factors : the faculty given by aerial warfare to carry out armed operations over the whole of enemy territory and the expansion of the destructive power of weapons. It was to fight against the temptation that this double development offers to the belligerents and to avoid that the bombardment of zones be accepted either by accustomedness or resignation, that it seemed advisable to the ICRC to formulate the rule of Art. 10 of the Draft Rules of 1956 and to emphasize, in this way, the prohibition on indiscriminate attacks. It has already been seen that the bombardment of zones which, during the second world war, were often of a terrifying magnitude, were summarily justified first of all and subsequently contested. At present, certain military circles themselves recognize that not only do indiscriminate bombardments not have any decisive effect on the military level, but even have the contrary effect because they increase the defensive will of the part affected. It may also be assumed that the basic rules already cover this unacceptable method, but there is the possibility of considering that certain zonal bombardments might be purely and simply prohibited in explicit terms 114/.

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113/ See Draft Rules on aerial warfare of 1923 (Annex XXII); the ICRC report the reaffirmation, page 72 and following; the ICRC's appeal of 12 May 1940; the Memorandum of 19 May 1967 (see Annex XX).

114/ Reference may also be made to the work of the Institute of International Law, particularly Art. 8 of the Edinburgh Resolution (see Annex XXIV).

## 5) Terrorization bombardments

This is also a case in point, firstly because there are all kinds of attacks which are intended to terrorize the civilian population (not only in the form of bombardments) and secondly, because there is only one specific case of attack involved, the motif for which an attempt has been made to discern.

Nevertheless, Art. 22 of the Draft Rules on aerial warfare of 1922 (see Annex XXII) already attempted to prohibit this type of bombardment and Art. 6, para. 1 of the Draft Rules expanded this conception by proposing the prohibition of all attacks of terrorization directed against the civilian population. As the Institute of International Law pointed out during its discussions, one can terrorize through other means than that of bombardment and this is why the resolution, in Art. 6, employs the terms "all actions" instead of "by means of combat".

A large proportion of the experts consulted by the ICRC, whilst recognizing the specific character of this type of prohibition, felt that it should, nevertheless, be affirmed by a real legal instrument.

### Concrete proposal by the ICRC

In a general way, the ICRC feels that the multiplicity of specific rules could weaken the scope of the basic rules. These basic rules are applicable in all situations of armed conflicts and, consequently in the case of bombardments. However, so as to take account of the opinions of some experts without formulating a proposal as such, the ICRC wishes to express a few ideas which could complete the provisions of the regulations of execution relating to active precautions.

1. All Parties must only order and undertake an attack when it will bring about an immediate military advantage for its author.
2. The bombardment of zones, as they are defined by, for example, Art. 10 of the Draft Rules of 1956 and Art. 8 of the Resolution of the Institute of International Law, could be expressly forbidden in a basic rule in the Protocol or in its regulations of execution.

3. All indiscriminate bombardments, or those directed deliberately against the civilian population in order to strike at them or terrorize them or for any other reason, could be expressly forbidden. The ideas generally expressed by Arts. 6 and 8 of the Resolution of the Institute and Art. 6, para. 1 of the Draft Rules of 1956, with respect to attacks, might serve as a point of reference and be included in a basic rule on the protection of the civilian population, or in the regulations of execution of the protocol.

## Chapter 3

Protection of the civilian population against  
the effects of certain weapons

1) Position of the ICRC

One cannot speak of the protection of the civilian population from the dangers of military operations without also speaking of the ever increasing dangers which the development of weapons and their use present, directly or indirectly, to civilians during periods of armed conflict 115/.

If the Red Cross is mainly concerned with the fate of persons "hors de combat", it has also been led to give its attention certain weapons themselves, for a long time. The Red Cross has been concerned about their use precisely because of their serious effects on protected persons; the ICRC has sometimes made statements in public on this subject, as was the case in 1918, with respect to the use of poisonous gases (see Annex XXI).

As its report on the Reaffirmation said, the ICRC is mainly concerned with chemical and biological weapons and it can be considered that the ICRC was, to some extent, the initiator of the Geneva Protocol of 1925, by virtue of the role it played in influencing public

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115/ See Title II, Chap. 1, 3) and below, the Annex No. XXV.

opinion 116/. Since then the ICRC has constantly urged the States to adhere to this important instrument; last June, the President of the ICRC approached 70 governments, 15 of which adhered to the Protocol before the end of the year, and of which number many others replied that they were considering doing so within the near future. Further to this, and as a complement to his work for the development of the Geneva Conventions, he has concerned himself with atomic weapons since September 1945 117/. In his appeal of 5 April 1950, addressed to the High Contracting Parties to the Geneva Conventions, the ICRC wrote the following :

"The International Committee of the Red Cross hereby requests the Governments signatory to the 1949 Geneva Conventions, to take, as a logical complement to the said Conventions - and to the Geneva Protocol of 1925 - all steps to reach an agreement on the prohibition of atomic weapons, and in a general way, of all non-directed missiles. The International Committee, once again, must keep itself apart from all political and military considerations. But if, in a strictly humanitarian capacity, it can aid in solving the problem, it is prepared, in accordance with the principles of the Red Cross, to devote itself to this task" 118/.

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116/ Nevertheless, the work relating to this, like that relating to weapons and disarmament in general, was always undertaken by and within the League of Nations (Conference on the reduction and restriction of armaments), and subsequently by the United Nations (Conference of the Committee on Disarmament). In the "documents relating to chemical and aerial warfare" presented to the members of the Conference for the reduction and limitation of armaments, 18 February 1932, the ICRC wrote : "... Taking the humanitarian point of view, which inspires all its initiatives, the International Committee feels that the only way to shelter the civilian populations from certain of the gravest dangers created by the state of war, is the prohibition, pure and simple, of aerial bombardment and of chemical and bacteriological warfare. It is in this spirit that the ICRC addresses an urgent appeal to the Conference".

117/ Circular to the central committees of the National Red Cross Societies, No. 370 of 5.9.1945.

118/ See ICRC report on "Reaffirmation", particularly page 53 et seq.

Any progress made in the prohibition of certain weapons which appear to be particularly cruel or perfidious, particularly weapons of mass destruction, represents a reduction in the risks incurred by civilian populations. The ICRC ardently desires such progress. At present, the problem of the prohibition of certain weapons and allied questions (manufacture, stockpiling, etc.) are being studied by the Conference of the Committee on Disarmament of the United Nations. Nevertheless, this examination has lasted for a half-century, during the existence of the League of Nations, and it is a matter of urgency that the Conference of the Committee on Disarmament should reach concrete and precise solutions. Consequently, as it indicated in the document entitled "Introduction", the ICRC feels that the Conference of Experts would be duplicating the work of other bodies by dealing with the prohibitions on certain weapons for what they are (per se).

On the other hand, in connection with the precautions to be taken so as to spare the civilian populations, the Conference of Experts could investigate the possibility of reaffirming or developing certain principles of a general scope, such as the principles of the limitation of the choice of means with which to injure the enemy, or the prohibition on causing unnecessary harm, or the principles relating to weapons which, by virtue of their effects or their imprecision risk reaching the civilian population in an indiscriminate manner 119/.

Moreover, although the prohibition on weapons for what they are, depends on other bodies, the ICRC has continued, as requested to do by resolution XIV of the Istanbul Conference, to pay great attention to these problems and, so as to keep up to date on their development, the ICRC has also questioned the experts consulted in 1970 on this subject.

On the basis of these consultations and the ICRC's studies 120/, the ICRC wishes to mention some of the problems which continue to be of concern and which should, in one way or another, receive or have confirmed, a solution reached by the competent bodies as soon as possible,

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119/ See Title II, Chap. 7, i.f.

120/ See Annex XXV.

so that more effective protection can be given to the civilian population in armed conflicts.

2) Some problems relating to the Geneva Protocol of 1925 and to certain weapons 121/

All the experts consulted in 1970, allowed that the Geneva Protocol of 1925 had an outstanding validity, but pointed out that it included certain limitations :

- a. It prohibits only the use of bacteriological and chemical weapons, without dealing with the question of manufacture or stockpiling 122/.
- b. It has not yet been ratified by the quasi-totality of the States as is the case with the Geneva Conventions 123/.

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121/ It would be wrong here to deal with weapons that cause needless suffering, since the civilian population as such must not be the object of direct attack; see document No. VI on this subject.

122/ The Geneva Protocol of 1925, therefore, touches on the law of warfare, but not the law on disarmament; this question is being currently investigated by the CCD, which has not yet arrived at an agreement on the subject.

123/ This lack of "universality" does not prevent the application of the norm of customary law relating to the prohibition of poisonous weapons, (as already referred to in Art. 70 of the "Code of the behaviour of armies on campaigns" promulgated in 1863 and drawn up by F. Lieber, also taken up by the Conventions in force, particularly The Hague Convention of 1907 in its Art. 23 a) and e), plus general principles of law which have been mentioned in this connection in resolution 2603 (XXIV) (see Annex X).

- c. It does not expressly provide for the case of non-international armed conflicts 124/.
- d. It has often been accepted with reservations 125/.
- e. It does not provide for a scrutiny procedure 126/.
- f. It provokes differences in interpretation with regard to the prohibition on chemical weapons 127/. The following problems should be borne in mind, in this connection, since they affect the civilian population in either a direct or indirect manner :

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124/ In the opinion of the ICRC, already contested by certain authors, moreover, the norm of customary law also applies to all armed conflicts. In February 1970 the ONG Committee on disarmament adopted a resolution in which it requested the governments to apply the Geneva Protocol in all armed conflicts (see Annex XXV). At its XIIIth General Assembly in Vienna, held from 31 August to 4 September 1970, the World Federation of Former Combatants adopted a resolution No. XII - "Prohibition of chemical and bacteriological weapons", in paragraph 9 of which it "is urged that all governments should accept the application of this Protocol in all armed conflicts".

125/ It is to be feared that these reservations, because of military alliances, seriously weaken the scope of the Geneva Protocol.

126/ The WHO has shown itself to be ready, if so requested by the UNO, to help it to thoroughly assess the allegations concerning the use of chemical weapons in conflicts between nations and even with respect to the action it is undertaking in favour of the limitation of chemical and biological weapons, thanks to the technical and scientific facilities it possesses (see WHO report "Public health and chemical and biological weapons", Chap. 9, edited in Geneva in 1970). It would therefore, be desirable for the WHO to offer its services to all the Parties concerned, whether armed conflicts of an international character are involved or not. With respect to armed conflicts of a non-international character, a procedure similar to that contained in Art. 3, common to the four Geneva Conventions of 1949, or Art. 19 of The Hague Convention of 1954, might be suggested.

127/ See next page.

i. Non-poisonous gases :

The experts stressed the fact that the use of these agents by police forces could not be compared to that in armed conflicts for two main reasons : during armed conflicts, anyone, especially the civilian population runs the risk of suffering from attacks on his health, his descendants or his life, following frequent, concentrated or prolonged exposure; during armed conflicts, moreover, these gases are never used alone, but in conjunction with classic weapons, thus made all the more formidable.

ii. Defoliating gases :

Some experts referred to the possible indirect effects of these gases on the civilian population, of which there are two different aspects : to the extent that they threaten, or effectively destroy objects indispensable to the survival of the civilian population, such gases may have effects comparable to those of a blockade; when they spread throughout the countryside, they can attack human beings through the absorption of water and contaminated foodstuffs and there are reasons to fear that they can cause damage to health or descendants 128/.

iii. Incendiary weapons :

These weapons can be particularly destructive according to the regions where they are employed, especially because they can claim numerous victims

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127/ Some proposed that the General Assembly of the United Nations should submit the Geneva Protocol to the International Court of Justice at The Hague for a consultative opinion as to the broad or restrictive interpretation to be given to the prohibition on chemical agents.

128/ See WHO report "Public Health and Biological and Chemical Weapons", Annex 1, D.

among the civilian population by spreading a conflagration 129/. Among the experts consulted by the ICRC, a large majority declared themselves in favour of the total prohibition of napalm, either because it is already prohibited by the law in force, or because it should be; they stated, nevertheless, that if a study were to be undertaken by the Secretary-General, it should deal with incendiary weapons on a global basis, without being restricted to napalm alone.

One can merely take note of the differences expressed on the subject of the prohibition of chemical weapons in various circles and on the legal plan, relative to the interpretation of the Geneva Protocol of 1925. On the other hand, from a strictly humanitarian point of view, attention must be paid to the opinion of the scientific circles, whose impartiality and reputability cannot be questioned and which is expressed, in particular, in the above-mentioned WHO report. As this report indicates, the classification of different agents under the headings "lethal agents", "incapacitating agents" and "harassing agents", does not rest on toxicological criteria, because the effects of a chemical weapon depend just as much on the way it is used as on its toxicological properties. Used in too large quantities, a harassing agent can be lethal or provoke serious injury; in the same way, distributed in weak concentrations, a lethal agent may only produce incapacitating or harassing effects.

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129/ Some people claim that, with respect to napalm, this is a licit weapon to the extent that it is directed against military objectives or certain specific military objectives (tanks). Others claim that it is illicit, on several counts : in view of its chemical effects, it is prohibited by the Geneva Protocol and in view of its effects causing atrocious and unnecessary suffering, by the St. Petersburg Declaration of 1868. The XXIIIrd resolution of Teheran (see Annex XXV) expressly mentioned napalm as being a forbidden weapon. The Secretary-General of the United Nations, in his second report, expressed the wish that the General Assembly should ask him to draw up a report on napalm weapons and on the effects of their possible use, but this idea was not taken up at the XXVth General Assembly. (see Secretary-General's report A/8052, paras. 122 to 126).

Since, on the scientific plane, it has not been shown in an impartial and incontestable manner that a particular gas could nor produce damage to the health, life or descendants of mankind, and in all possible types of situation, the ICRC - as it did in 1932 130/ - expresses the wish that the Powers renounce the use of any chemical weapon whatsoever in any armed conflict.

#### Concrete proposals by the ICRC

1. The attitude of the ICRC has been expressed above, although it has not yet been taken up because several of these questions are being dealt with by the Conference of the Committee on Disarmament. Nevertheless, if the Conference's work is not completed within the near future, the ICRC will take up its position again, if its collaboration can help towards finding a solution to the problems.

In the meantime, the ICRC will continue its moral action by proclaiming that indiscriminate weapons are incompatible with the respect due to civilian populations and individuals.

2. With regard to "active" precautions, a proposal has been made above concerning the choice of weapons and means to injure the enemy; reference can also be made to Title II, Chap. 7, 2.
3. Finally, the ICRC believes, like many of the experts, that the Secretary-General's idea of drawing up a report on napalm could followed through, but that all incendiary weapons in general should be included in this study.

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130/ See above, Note 116 i.f.

## Chapter 4

Protection of the civilian population against  
certain methods of economic warfare

1) General remarks

In this field, international law provides hardly any explicit indication on the licitness or illicitness of certain methods of economic warfare. Reference may only be made, therefore, to the general principle of Art. 22 of The Hague Regulations of 1907 (see Annex III) reaffirmed and developed by many international resolutions <sup>131/</sup>. Other experts have referred, in this connection, to the Convention on Genocide (see Annex VI), to which 80 States, approximately, are parties. In the present document, only three important problems relating to certain methods of economic warfare will be dealt with : non-military objects indispensable to the survival of the civilian population, blockades and assistance. This last problem will be dealt with separately in the following chapter.

2) Destruction of non-military objects indispensable to the survival of the civilian population

Attempts have sometimes been made to justify the destruction of non-military objects, particularly those subsistence indispensable to the survival of the civilian population, such as the destruction

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<sup>131/</sup> See resolutions XXVIII of Vienna (see 2444 (XXIII) (see Annex IX), 2675 (XXV, XI) and XXVI of Istanbul (see Annex XVI).

classic methods or by chemical - arguing that this destruction is deigned to prevent consumption by enemy troops. Nevertheless, in most cases it is obviously not possible to distinguish between corps "destined for the civilian population" and those "destined for combatants". The experience gained from many conflicts has shown that when reserves of food are low, it are civilians who are the first to be "rationed" : children, in particular, are affected by malnutrition.

All the laws referred to in the preceding paragraph (1) remain valid, but it seemed necessary to clearly specify certain principles in a draft protocol, particularly as regards the prohibition on the destruction of non-military objects indispensable to the survival of the civilian population.

The ICRC formulated a proposal on this subject in Chap. 6 of Title II, which will be repeated below. It has a special importance with respect to the prohibition of famine as a method of warfare.

### 3) Blockade

In a general sense, the experts consulted in 1970 felt that the blockade, as such, was not an illicit method of warfare, but, on the contrary, generally accepted, at least when it is directed exclusively against combatants. There again, experience gained from armed conflicts shows, in the vast majority of cases that combatants and civilian populations are mixed up with one another and that the question of a blockade becomes a very acute one. The same remarks may be made here as in the foregoing paragraph, viz., when food and rations diminish, it is firstly civilians and not combatants who suffer the harmful effects, particularly children.

In existing law, it must be remembered that the question has been settled, at least partially, by Art. 23 of the Fourth Geneva Convention of 1949 to which reference is made. Nevertheless, this provision is not directly applicable in all armed conflicts and it raises different practical problems. The Secretary-General, in

his second report, proposed a model minimal draft rule :

"The obligation, assumed by all interested parties, not to organize a military blockade which would run the risk of causing needless suffering to the civilian population by depriving it of foodstuffs and medical supplies as well as other factors essential to its survival" 132/.

### Concrete proposals by the ICRC

#### Measures for prohibiting famine

The third paragraph of the proposal relating to the protection of non-military objects will be given here 133/ :

"Among non-military objects, those indispensable to the survival of the civilian population must be neither destroyed, nor damaged, nor be made the object of reprisals in as much as the survival of the civilian population would be threatened".

### Commentary

Reference to the commentary of the chapter in question is made by specifying that the non-military objects in question are those mentioned by way of example in the proposal relating to the definition of non-military objects : foodstuffs and crops, sources of water, etc.

#### Limitation of blockades

As regards the case of non-international armed conflicts, reference is made to document V and, furthermore, to the proposal formulated in the following chapter.

132/ Secretary-General's report A/8052, para. 42, i).

133/ See Title II, Chapter 6.

## Chapter 5

International relief action for the  
civilian population

1) General remarks

The idea that the civilian population has the right to receive humanitarian assistance on an international level, seems to be an accepted principle within the United Nations, especially its Economic and Social Council, and within the International Conferences of the Red Cross. As regards the Red Cross, it will be recalled that international relief action often constitutes one of the important aspects of its activities. As this assistance may be necessary in time of peace as well as in time of war, the two international institutions concerned, the ICRC and the League of Red Cross Societies, have come to an agreement providing for the division of their activities in this field. 134/

At the last international Red Cross Conference in Istanbul, three pertinent resolutions were adopted, bearing the nos XXV "Measures to be taken in view of natural disasters", XXVI "Declaration of principle relating to assistance brought to civilian populations during disasters" (see Annex XVI) and XXVII "Utilization of scientific knowledge for the co-ordination of international assistance programmes".

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134/ See the agreement between the ICRC and the League, of 25 April 1969, particularly Arts. 2 to 5. Grosso modo, the ICRC would assume, where a neutral intermediary was necessary, the general administration of international Red Cross activities during periods of armed conflicts, whereas the League would co-ordinate the assistance activities of the National Societies and would direct, where required, international Red-Cross activities during peace time; the creation of a co-ordinating body between the ICRC and the League is also envisaged.

In his first report, the Secretary-General of the United Nations also alluded to the problem of international assistance in general. 135/

## 2) International relief action during armed conflicts

So as to keep within the scope of the present document, the problem of the provision of international assistance in time of peace will not be tackled, although reference must be made to an important resolution on this subject adopted during the course of the 49th session of the Economic and Social Council of the United Nations, in July 1970. 136/

For the ICRC, the provision of international assistance is only one of the aspects, sometimes important, of the activities deriving from its right to take humanitarian initiatives, affirms mainly by Arts 9/9/9/10 and by Art. 3 of the Geneva Conventions of 1949. 137/

The Secretary-General of the United Nations, in his second report, proposed, among the minimum rules applicable to all armed conflicts "the right of the civilian population to receive, under conditions acceptable to the authorities who exercise control over the territory where this population is situated, international assistance and aid, including medical supplies, essential foodstuffs and other materials vital to survival". 138/

Resolution XXVI of Istanbul (see Annex XVI) does not explicitly mention, either in its heading, or in its preambular, or even in its substantive paragraphs, the case

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135/ See Secretary-General's report A/7720, para. 153 to 155.

136/ See resolution 1546 (XLIX) "Assistance in cases of natural catastrophes", quoted in the International Red Cross Review of November 1970.

137/ See Commentary on the four Geneva Conventions of 1949, re : the above-mentioned articles.

138/ See Secretary-General's report A/8052, para. 42, f).

of armed conflicts. It is interesting to note that resolution 2675 (XXV) (see Annex XI), in substantive paragraph 8, expresses the terms of resolution XXVI of Istanbul, specifying on this occasion that it is applicable to cases of armed conflict. 139/

#### Concrete proposal by the ICRC

For the time being, the ICRC feels that international law in force, is sufficient. Nevertheless, without wishing to prejudice the opportunity of providing for additional specific provisions, it might be considered useful to insert the declaration of principle contained in resolution XXVI of Istanbul in the regulations of execution of the draft protocol; or in an annex; however, its field of application must, of course, be specified so as to take account of the recent relevant resolution of the XXVth General Assembly of the United Nations.

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139/ This phenomenon of the two-fold international affirmation of principles of a humanitarian nature in the resolutions of two international organizations which are independent of each other - chronologically, by the International Red Cross Conference and by the General Assembly of the United Nations, made its first appearance with resolution XXIII of Vienna most of which was reaffirmed by resolution 2444 (XXIII) of the United Nations.

## Chapter 6

Other problems relating to the protection of the  
civilian population

In its questionnaire relating to the protection of the civilian population, sent out to the experts consulted in 1970 (D 1157b), the ICRC asked whether there were other important problems concerning the protection of the civilian population which also had to be studied at a later date. The experts' proposals referred to matters which have been dealt with in other documents. Nevertheless, the following points can be referred to : the destruction of merchant shipping and the treatment of their crews in naval warfare; the deportation of civilians 140/; the possibilities of evacuating the civilian population; the protection of real property against expropriation which is not founded on reasons of security and measures to reinforce the application of humanitarian law relating to the protection of the civilian population.

As indicated in the introduction, a brief examination of certain problems relating to preliminary provisions of the draft protocol will be undertaken here, although this is a question which, in any case, is only to be dealt with at a later stage.

Concrete proposal by the ICRCa) Title of the protocol

For two reasons, the proposed title is "protocol relating to the protection of the civilian population in armed conflicts" : firstly, because it corresponds better to

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140/ See resolution 2675 (XXV), substantive paragraph 7 (see Annex XI).

the terminology used in the Hague Convention of 1954 on the protection of cultural property in armed conflicts and in the recent United Nations resolutions; secondly, because it will not be prejudicial if attached to the Geneva law or to that of The Hague.

b) Preamble

The preamble, which is considered indispensable, could contain the ideas expressed in the preamble to the Draft Rules of 1956 (see Annex XIX), by developing that according to which only true peace can confer absolute immunity upon the civilian population and individuals, because during armed conflicts, the Parties concerned are never in a position to guarantee it. The norms applicable to the civilian population during armed conflicts only constitute, therefore, a palliative, albeit indispensable as long as there is no assurance of peace.

c) Preliminary provisions

i. Aim

In a preliminary provision or in the preamble, there could be a mention of the humanitarian tendency of the instrument in question and insistence on the need to spare illicit objectives during armed conflicts; the following formula could be adopted, for instance, "So as to assure as broad a protection as possible to the civilian population and individuals in armed conflicts, the Parties shall take all necessary measures of respect and safeguard. This general rule is affirmed by the provisions which follow."

ii. Application

By referring to the ensemble of the international resolutions considered in Title I, relating to the civilian population and particularly those of the General Assembly of the United Nations 141/ which always express general principles valid for all armed conflicts, it

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141/ See resolutions 2444 (XXIII), 2675 (XXV), etc. in Annexes IX and XI.

could be envisaged that the "basic rules", which are derived directly from these resolutions, should apply in all circumstances and to all types of armed conflict, even if the state of armed conflict is not recognized by one of the Parties.

On the other hand, in the regulations for the execution of the protocol, which could contain more precise and more numerous rules of application, a distinction could be made between the different types of armed conflict.

### iii. Relation with previous conventions

Exceptionally, the former Art. 5 of the Draft Rules of 1956 could be considered here (see Annex XIX).

A distinction must be made between the question of relation with previous conventions and that of link to the said conventions. For the moment, as has already been indicated in the general introduction (see document No. I) the ICRC wishes to know, in a general sense, the opinions of the experts on this subject. The ICRC pointed out that among the experts consulted, to whom the question on the subject of the rules relating to the protection of the civilian population was put, a slight majority were favourable towards linking the Protocol to the Fourth Geneva Convention of 1949, whereas others preferred linking it to the Hague Regulations of 1907. The problem arises, it is true, for the "basic rules" submitted to the experts for study, some of which are better attached to the Fourth Geneva Convention of 1949 and others to the Hague Convention of 1907 and often to both! Moreover, the conception of an independent protocol might be envisaged 142/.

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142/ This solution, somewhat rare, is not excluded; for instance, the Geneva Protocol of 1925 has not been finally linked to any international convention.

iv. Scrutiny

The investigation of means and methods of reinforcing the application of international humanitarian law in general is dealt with in a separate document No. II.

v. Penal provisions

In the preliminary provisions of the protocol, as in the Geneva Conventions of 1949, the inclusion of penal provisions of a general nature on the subject or serious violations, could be envisaged. It would, of course, be up to the States concerned to insert them in their national penal legislation, by means of provisions which would specify the terms and competent courts of jurisdiction 143/. Serious violations would be mainly: non-observation of the "basic rules" to be affirmed by the protocol itself, with the possible exception of those which relate to "passive" precautions, as well as the violation or abuse of emblems or measures of special protection. In the Geneva Conventions, the abuse of the Red Cross emblem is not explicitly described as a serious violation; this is perhaps regrettable, because one case of such abuse could encourage the systematic violation of the emblem.

vi. The problem of reservations 144/

It would be advisable, at least within the text of the "basic rules" - leaving open the question of the regulations for the execution of the protocol - to exclude the possibility of reservations in a preliminary provision, since the basic rules concerned are fully accepted in principle by the nations of the world as a whole.

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143/ On the subject of measures taken to suppress serious violations of the Geneva Conventions of 1949 in the different national laws, reference can be made to the two ICRC reports entitled: "Respect of the Geneva Conventions, measures taken to repress violations", submitted by the ICRC to the XXth and XXIst International Red Cross Conferences respectively, held in 1965 and 1969.

144/ See Art. 19 of the Convention of Vienna on the Law of Treaties, A/CONS. 39/27 of 23 May 1969.



TITLE IV

RECAPITULATION OF "BASIC RULES"

Proposals for a protocol on the protection  
of the civilian population in time of armed conflict

A. PREAMBLE

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(See Title III, Chap. 6).

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B. BASIC RULES

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I PRELIMINARY PROVISIONS

Aim

Application

Relation with previous conventions

Scrutiny

Penal provision(s)

Reservations

(See Title III, Chap. 6).

## II POPULATION AND CIVILIAN PERSONS

### Distinction

"In the conduct of military operations, a distinction must be made at all times between, on the one hand, persons who directly participate in military operations and, on the other hand, persons who belong to the civilian population, to the effect that the latter be spared as much as possible.

Consequently, attacks must in all circumstances be restricted to military objectives alone".

(See Title II, Chaps. 1 and 2).

### Definition

#### First proposal

"The civilian persons constitute the civilian population. Civilians are those persons who do not form part of the armed forces, nor of organizations attached to them or who do not directly participate in military operations (or : in operations of a military character). The above-mentioned persons whose activities contribute directly to the military effort do not, for that reason, lose their status of civilians".

#### Second proposal

"Persons who do not form part of the armed forces, nor of organizations attached to them or who do not directly participate in military operations (or : in operations of a military character), are civilians and, as such, they constitute the civilian population".

(See Title II, Chap. 2).

### General protection

"The civilian population shall enjoy general protection against dangers arising from military operations. The civilian population should not, in particular, be the object of attacks mounted directly against it. Neither should it be used, by its presence, to render certain points nor areas immune from military operations.

Nevertheless, civilians whose activities directly contribute to the military effort, assume, within the strict limits of these activities and when they are within a military objective, the risks resulting from an attack directed against that objective.

The civilian population taken as a whole, like the individuals who constitute it, must never be made the object of reprisals".

(See Title II, Chap. 3 (2)).

### Children

"Children of less than 15 years of age (or : children or young children) shall be the object of special protection.

The Parties to the conflict shall make every effort to keep them away and safe from military operations".

(See Title II, Chap. 3 (3)).

### Women

(See Title II, Chap. 3 (3), and document VII, I, Art. 2).

Members of the civilian medical personnel and  
civil defence service personnel

"The Parties to the conflict shall facilitate the task of medical personnel; they shall authorize the civil defence service personnel to accomplish their mission, especially when their functions are mainly exercised in favour of the civilian population and individuals".

(See Title II, Chap. 3 (3)).

III OBJECTS ( OR : PROPERTIES) DESIGNED TO THE CIVILIAN  
POPULATION

Distinction

"In the conduct of military operations, the distinction must be made at all times between military objectives and non-military objects, so that the latter be spared as much as possible.

Consequently, attacks must in all circumstances be restricted to military objectives alone".

(See Title II, Chap. 4).

Definition

"Objects reputed to be non-military are those necessarily or essentially designed for the civilian population, even should they subsequently assume a preponderantly military character following a transformation of their use.

Non-military objects are those such as houses and constructions which shelter the civilian population or which are used by it, foodstuffs and food producing areas, and water sources and tables".

(See Title II, Chap. 5).

#### General protection

"Non-military objects which are necessarily or essentially designed for the use of civilian population enjoy a general protection against the dangers arising from military operations. They should not, in particular, be made the object of attacks directly launched against them, unless they are used mainly in support of the military effort.

Among non-military objects, those indispensable to the survival of the civilian population must be neither destroyed, nor damaged, nor be made the object of reprisals in as much as the survival of the civilian population would be threatened".

(See Title II, Chap. 6 (2) and Title III, Chap. 4).

#### Special protection

"Non-military objects which are accorded special protection by the law in force shall not be used, by their presence, to render certain points or areas immune from military operations.

They may not be made the objects of reprisals".

(See Title II, Chap. 6 (3)).

Installations containing dangerous forces

"So as to spare the civilian population from the dangers which may result from the destruction of constructions and installations - such as hydro-electric dams, nuclear power stations and dykes - following the release of natural or artificial elements, the interested States or Parties are invited :

a) to agree on a special procedure, in time of peace, whereby a general protection may be assured, in all circumstances, to such of these installations as are designed for essentially peaceful purposes;

b) to agree, during periods of conflict, on granting a special protection - possibly taking existing legal provisions as a basis - to such of these installations whose activity does not have any, or no longer has any, relationship with the conduct of military operations.

The preceding provisions do not discharge the Parties to the conflict from fulfilling their obligations to take precautions laid down in the present rules, and, particularly in Arts. ...and ... in any way".

(See Title II, Chap. 6 (3)).

Undefended populated areas

(See Title III, Chap. 1 (2)).

Populated areas under particular protection

(See Title III, Chap. 1 (2)).

IV PRECAUTIONS TO BE TAKEN TO SPARE THE CIVILIAN POPULATION"Active" precautions

"When a Party to a conflict orders or launches an attack, he shall take all necessary steps to spare the civilian population and individuals, and non-military objects designed for their use (or : non-military objects which are indispensable for their survival).

In this connection, the persons mentioned in Art. ... shall benefit from the presumption that they belong to the civilian population; similarly, non-military objects mentioned in Art. ... shall benefit from the presumption that they have no military character whatsoever".

(See Title II, Chap. 7 (2)).

"Passive" precautions

"The Parties to the conflict shall take, so far as possible, all necessary steps to protect the civilian population and individuals, and the non-military objects designed for their use (or : indispensable to their survival), which are subject to the authority of the Parties, from the dangers arising from military operations.

They shall make every effort, either to remove military objectives from threatened areas - subject to the provisions of Art. 49 of the Fourth Geneva Convention of 1949 - or to avoid the permanent presence of military objectives in towns or other densely populated areas".

(See Title II, Chap. 7 (3)).

C. REGULATIONS OF EXECUTION

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I GENERAL RULES OF APPLICATION

International relief action

(See Title III, Chap. 5 (2)).

Undefended populated areas

(See Title III, Chap. 1 (2)).

Populated areas under special protection

(See Title III, Chap. 1 (2)).

Definition of military objects

(See Title II, Chap. 5 (2)).

Rules relating to "active" precautions

Identification

"Those who order or launch an attack must ensure that the objective or objectives concerned are not civilian elements, but are identified as military objectives".

Warning

"Those who order or launch an attack must warn the civilian population threatened, whenever the circumstances permit, so that it may find shelter".

Proportionality

"Those who order or launch an attack must take into consideration the losses or damage which the attack, even carried out with the precautions laid down in Arts. ... may inflict on the civilian population and non-military objects designed for its use (or : non-military objects indispensable to its survival).

When there is a choice between several objectives which will obtain the same military advantage, the choice shall fall upon that which entails the least danger to the civilian population and non-military objectives designed for its use (or : which are indispensable to its survival).

The attack shall be abandoned if it is found that the probable damage would be disproportionate to the military advantage anticipated".

Choice of weapons and methods of inflicting injury on the enemy

"Those who order or launch an attack must take the necessary precautions in the choice of weapons and methods of attack, as well as in the execution of such an attack, so as not to cause losses or damage (or : at least to reduce them to a minimum) to the civilian population or individuals, or to non-military objectives designed for their use (or : non-military objects indispensable to their survival), in the vicinity of a military objective.

The attack shall be abandoned, or suspended, if it appears that the conditions laid down in the present article cannot be respected".

(See Title II, Chap. 7, and Title III, Chap. 3 (2)).

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II RULES OF APPLICATION RELATIVE TO ARMED CONFLICTS OF AN  
INTERNATIONAL CHARACTER

Rules relating to civil defence organizations

(See Part Two).

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P A R T T W O

STRENGTHENING OF THE GUARANTEES AFFORDED BY  
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INTERNATIONAL HUMANITARIAN LAW FOR NON-MILITARY  
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CIVIL DEFENCE ORGANIZATIONS  
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## Chapter 1

Introduction1) General remarks

It was deemed expedient to bring up, in a special part of this document, the problem of civil defence organizations and the reinforced guarantees which humanitarian law can provide for them. This problem was the subject of special studies by the ICRC, some of which went deeper than those on other aspects of protection for the civilian population in general, and it was the subject of separate reports to the last two International Conferences of the Red Cross 145/. It also appeared necessary to deal with the problem in this document in order to emphasize that it is closely related to efforts intended to bring about a general improvement in the protection of the civilian population against the effects of military operations.

One feature of the whole development of the humanitarian law laid down in, inter alia, the Geneva Conventions, which must be highlighted and which distinguishes those Conventions from the international instruments relating to human rights, is that the Geneva Conventions do not merely demand that belligerents respect and treat certain categories of persons humanely; from as early as 1864, the very first of the Geneva Conventions, and its subsequent versions, have endeavoured to provide protection and special facilities to the personnel and organizations which help war victims. That special protection

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145/ See ICRC documents entitled : "Status of Personnel of Civil Defence Organizations" submitted to the twentieth and twenty-first Conferences of the Red Cross (Vienna, 1965 and Istanbul, 1969).

is not granted such personnel and organizations per se, but because, and only because, of their relief actions which are sometimes essential to the survival of the human beings which the Geneva Conventions are designed to protect and rescue from the maw of war. This basic aspect has been given expression in the special protection for military medical personnel, and in the facilities granted relief organizations going to the help of prisoners of war, civilian internees or civilians in occupied territories.

For the civilian population in general, this aspect is reflected in the special protection which the Fourth Convention grants to the personnel of civilian hospitals and medical transports 146/. However, apart from the truly medical and hospital personnel there is another category which even more frequently is essential for the protection and survival of the population, namely those persons who rescue civilian wounded from under ruined buildings to take them to first aid posts or hospitals; the persons who fight fires, who provide displaced persons with emergency relief and social assistance and who take precautionary measures for the protection of the population. That personnel and the many duties which they carry out are generally designated "civil defence personnel" and "civil defence organization".

## 2) Article 63 of the Fourth 1949 Geneva Convention

The important functions performed by those organizations during the Second World War are well known and the second paragraph of Article 63 of the Fourth Geneva Convention stipulates special guarantees for those organizations and their personnel in occupied territory so that - like National Red Cross Societies - they may continue

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146/ See, inter alia, Articles 18 - 22 and 30 et seq. of the Fourth Geneva Convention of 1949 (Annex VII). As is well known, the ICRC is endeavouring to extend precisely this protection to a greater range of civilian medical personnel (cf. proposals in document VII).

their relief work even under occupation 147/.

However, the studies carried out by the ICRC since 1954 on the general strengthening of protection for the civilian population in armed conflict, showed the provisions of Article 63 to be inadequate in the opinion of many experts, particularly of National Red Cross Societies which participated in those studies as, very often, National Societies were called upon, in one way or another, to provide civil defence organizations with personnel, and they were encouraged to do so by resolutions of International Conferences of the Red Cross.

The following arguments, inter alia, were put forward :

- the inadequacy of the Fourth Geneva Convention which did not always effectively protect such personnel; Article 63 related only to occupation and Article 20 could not, in general, be applied to civil defence medical services;
- the need for better protection for organizations in which members of the Red Cross had sometimes an important role and whose personnel, by reason of the tasks they had to perform, could quite easily be confused with the army;
- the advisability of having a special regulation inducing governments to make a clearer distinction between the civil defence services performing solely civilian duties and the units on civil defence duties which were military or of military status.

Bearing those arguments in mind, the ICRC introduced into its Draft Rules a special article as a guide providing, inter alia, that "Parties to the conflict should facilitate the work of the civilian bodies exclusively engaged in protecting and assisting the civilian population in case of attack" and that "they can agree to confer special immunity upon the personnel of those bodies... by means of a special emblem" 148/.

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147/ See Annex VII for the text of Article 63.

148/ See Article 12 of the Draft Rules in Annex XIX.

Although the Draft Rules as a whole were not followed up by government action, the authorities in several countries, at that time or later, displayed considerable interest in that article and they asked that the ICRC give it special attention : the ICRC did so when carrying out its thorough studies on this subject, particularly between 1961 and 1968.

## Chapter 2

ICRC Studies

Further information on those studies may be found in the reports which the ICRC submitted on this question to the 1965 and 1969 International Conferences of the Red Cross 149/. One will merely refer briefly in this document to the main phases of those studies before giving the essential, that is to say the results of the studies and the concrete proposals which the ICRC can submit to the experts.

Before doing so, however, mention must be made of four types of difficulty encountered by the ICRC in this work :

a) The organization and structure of civil defence services vary considerably from one country to another. Some countries have no such services. Sometimes the services are military or para-military and their personnel may have to discharge the duties of military and combat personnel. By contrast, some of the organizations are purely civilian and their duties purely humanitarian. It goes without saying that it is only for the latter that the Red Cross may contemplate granting protection and special facilities in humanitarian law. In this connection, the heading "Status of civil defence service personnel" used in ICRC reports and the relevant resolutions of international conferences 150/ has often given rise to some confusion; it is preferable to use the heading of the second part of this document, that is to say "Strengthening of the Guarantees Afforded by International Humanitarian Law for Non-Military Civil Defence Organizations".

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149/ See note 145.

150/ Inter alia, Vienna resolution XXIX and Istanbul resolution XV (see annexes XIII and XV).

b) Many, particularly the developing, countries do not have civil defence organizations. Consequently, the ICRC's studies have not directly interested the international community as a whole, but a number of individual countries. However, progressively with the development of the administrative services in the emerging countries and with the organization of those countries to meet natural disasters or armed conflicts - contingencies which, alas, spare no part of the world - those countries become interested in the technical and legal problems of civil defence, the more so as such bodies are of the greatest utility in the event of natural disaster.

c) There have been many changes in the very concept of civil defence over the last few decades, depending on whether the services in question were preparing for a large scale war, not excluding even atomic weapons (such preparation being considered by some as unrealistic) or contemplating action rather in the conventional type of conflicts. These various concepts, naturally, have led to changes in the structure and organization of civil defence.

d) In the fourth place, for understandable reasons of economy, some countries have refrained from establishing or maintaining civil defence organizations in time of peace and have entrusted some functions of such a body to the army (for example territorial army). In this respect it must be underlined that the studies carried out by the ICRC and the proposals given below in no way imply that such bodies, fully constituted even in time of peace, actually exist. The proposals cover armed conflicts and should benefit the bodies which exist or are set up when conflict occurs irrespective of whether they are highly integrated structures or merely various State or voluntary services working together.

It was in the context of these conditions that the ICRC developed its studies in three stages :

1) In 1964, the ICRC convened a meeting of some thirty experts from government services and National Societies to examine the possibility of drawing up rules to give better protection in humanitarian law to civil defence organizations.

The purpose of that preliminary private meeting was above all to enable the ICRC to learn, from the governments which were especially interested in the question, to what extent and in what direction it was possible to proceed further. The meeting enabled the ICRC to submit to the XXth International Conference of the Red Cross, in 1965, an extensive and detailed report on the main problem involved in drawing up the rules envisaged : it also outlined solutions to some of the difficulties.

Although it expressed reservations on several aspects, the 1965 Conference, by a very large majority, adopted Resolution XXIX (see Annex XIII) which settled, inter alia, an important question of principle : it expressly recognized "the necessity of strengthening" the protection provided by international law for civil defence bodies. On the other hand, it directed the ICRC to carry on its work to find the ways and means of doing so.

This word "strengthening" should be underlined : for one thing, it shows that guarantees for civil defence bodies already exist (in Article 63 of the Fourth Geneva Convention of 1949), and also that the international community had come to the conclusion, in this field too, that the solution offered by the Geneva Conventions were no longer adequate.

2) A notable feature of the second phase of the ICRC's work, from 1965 onwards, was a series of consultations with governments which were particularly interested in these problems. The Vienna Resolution No XXIX requested the ICRC to convene a further meeting of experts; the nature of the meeting was not specified. In addition, the ICRC hoped that the governments concerned, in private talks, would themselves endeavour to resolve certain divergent views on basic problems. Those conversations were held by several governments, particularly of the nordic countries, at the level of the services concerned. In addition, the governments consulted considered that the meeting of experts mentioned in the Vienna Resolution No XXIX, should be general in nature and, in particular, include a wide representation of the developing countries.

3) Nevertheless, in the third stage, the ICRC considered that with respect to some major basic questions, the situation was not sufficiently clear and that there was no definite consensus. It was of the opinion that before assigning the work to a large meeting of government experts it would be preferable as an intermediate step to hold a meeting of an Advisory Panel of a number of specialists on a personal and private basis with the aim of drawing up a preliminary set of Draft Rules.

That group met in November 1967 and after a week of intensive work drew up some ten basic articles for the envisaged rules. However, some questions were left unanswered and some difficulties unresolved.

The results of this work were submitted to the XXIst International Conference of the Red Cross by the ICRC in an interim report. The ICRC stated, inter alia, that it had not taken its work in this particular field further because, for one thing, its work had reached an advanced stage and, for another, it had to direct its main effort, for various reasons, to the reaffirmation and development of all humanitarian law applicable in armed conflicts, an effort which would simultaneously affect this particular field.

Such, in brief outline, were the main stages of the ICRC's work in this field up to the XXIst International Conference of the Red Cross.

## Chapter 3

The Present State of the ICRC's Work and its Concrete Proposals1) Present state of the work

As is well known, the Istanbul Conference adopted a Resolution on this work (see Resolution XV in Annex XVII) which contains two main parts. One, stresses that " the strengthening of international legal protection for civil defence services comes under the more general attempts which are being made to reaffirm and develop the laws and customs applicable in armed conflicts". This observation, as already said, justifies the examination of this question in the present document on the protection of civilian population in general. In addition, the conference recognized that the work of the Advisory Panel gave a more favorable basis for the solution of problems still unsolved. It also requested the ICRC to "convene a meeting of governmental and Red Cross experts with a view submitting to governments, for approval, regulations supplementing the provisions of the existing humanitarian conventions".

For various reasons, one of them, being the desire to save time, the ICRC deemed it expedient not to call a new conference of experts specially for this problem. It considered it preferable to submit to the conference of government experts for which the present document is intended. Not only does it seem that that conference, by its scope, responds to the recommendation previously made by the governments consulted but, more especially, that it is high time for this particular question of better protection for civil defence organizations to be examined together with the whole problem of the protection of the civilian population in general and simultaneously with

other related questions such as measures to strengthen the protection of civilian medical personnel.

## 2) Concrete proposals by the ICRC

Taking into account the work reviewed above, the ICRC will submit two concrete proposals to the experts :

1) In the first place the ICRC considers that the basic rules relating to the protection of the civilian population should include a provision of a general nature drawing attention to the facilities and guarantees which should be granted to the civil defence personnel whose duties are clearly humanitarian. That provision would be valid for all conflicts. In this connection the reader is referred to the proposal contained in Part I, Title II, Chapter 3 (3).

2) The ICRC proposes to include in a special section of the Draft Protocol 151/ a more detailed regulation on the protection of humanitarian civil defence organizations and personnel. This part would be in the nature of an addition, and would be optional in that the States could decide whether to be bound or not by this regulation which would be valid in international armed conflicts. It goes without saying that, for the safeguard of the population, the ICRC hopes that the greatest possible number of States will undertake to be bound by these regulations which would thus acquire a general character.

With a view to such a regulation, the draft stipulations suggested by the 1967 Advisory Panel are given below. They may be given a more simplified form. The ICRC has preferred to submit them not as numbered articles but as the elements for draft rules with indications of the essential subdivisions 152/.

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151/ E.g. in the second part of the regulations for the execution (see Part I, Title IV C).

152/ The Advisory Panel conceived of this draft regulation mainly as an additional protocol to Article 63 of the Fourth Geneva Convention of 1949. That idea was not expressly adopted since, as said above, the link between the whole protocol on the protection of civilian population to existing international law instruments has not yet been decided by the ICRC.

The ICRC will give, beneath the draft rules, comments on problems which the Advisory Panel did not solve. They will in the main be extracted from the report which the ICRC submitted to the Istanbul Conference.

Chapter 4

Outline for Draft Regulations

Proposals for Strengthening the Guarantees Afforded  
by International Humanitarian Law to Non-Military  
Civil Defence Organizations

Definition

A. The civil defence organizations covered by the regulations are those bodies fulfilling the following conditions :

a) that of having no military character and no combatant missions whatsoever;

b) that of carrying out in armed conflicts humanitarian tasks on behalf of the civilian population, without any distinction based on race, nationality, religious belief, political opinions or any other similar criteria;

c) that of being set up by their Government, or, if they are voluntary agencies, officially authorized to perform these tasks.

B. The non-military character of the organizations is not affected :

a) if they are under the authority of the Ministry of War or of National Defence;

- b) if their recruitment is made under obligation;
- c) if they are organized on a military pattern;
- d) if a limited number of their personnel are given light weapons to be used for the maintenance of order or for self-defence in connection with their humanitarian tasks.

C. These organizations may also, in the exercise of their specific duties :

- a) take orders from a military command;
- b) co-operate with military personnel;
- c) take care, when needful, of wounded and sick soldiers and rescue helpless soldiers.

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### Tasks

The general tasks of the organizations covered by the regulations are to ensure the survival and the living conditions of the civilian population exposed to dangers arising from military operations or natural disasters.

These organizations may, in particular, perform the following tasks :

- a) preventive and protective measures on behalf of the civilian population (construction and superintendence of shelters; evacuation of populations; raising the alarm in case of air-raids or danger of radioactivity; fire-fighting, precautions against radioactive contamination, etc.);

- b) resuing persons, first aid, care of wounded and sick;
- c) provision of material and social assistance to populations in need of such aid;
- d) protection of property essential for the existence of the civilian population;
- e) maintenance of essential public utility services needed by the civilian population;
- f) maintenance of order as far as may be required for accomplishing their humanitarian tasks;
- g) preparatory measures (training of personnel; technical studies; public information, etc.).

These tasks may be performed on the site of military objectives, but only so far as they retain their humanitarian character.

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## Protection

### a) Protection of the organizations

The organizations covered by these regulations shall at all times be permitted to perform their tasks.

If they are called upon to carry out their tasks of assistance in areas where fighting is going on, their activities shall not be impeded unless imperative military requirements demand otherwise.

In occupied territory, such organizations shall be granted by the relevant authorities every facility for them to carry out their tasks, subject to temporary and exceptional measures that may be imposed by the Occupying Power for urgent reasons of security.

The Occupying Power may not :

i) make in the personnel or management of the organizations any changes that might prejudice the efficient discharge of their tasks;

ii) assign to them tasks other than those provided for, or oblige them to serve outside the occupied territory;

iii) demand the organizations to carry out their humanitarian tasks for the benefit of personnel of the Occupying Power who might require urgent assistance, unless the protection of the civilian population has been previously ensured.

b) Protection of personnel

Personnel belonging to organizations covered by these regulations and who are assigned to duties provided for by the regulations shall be specially respected and protected in accordance with the following provisions.

Personnel called upon to carry out their activities of assistance in areas where fighting is going on shall in no case be attacked, and shall continue their activities, unless imperative military requirements oblige them to stop for temporary and exceptional reasons.

In occupied territory, such personnel shall be granted by the Occupying Power the personal facilities that may be necessary for them to accomplish the tasks provided for in the regulations.

Persons permanently assigned to these tasks shall not be compelled to undertake any other work against their will.

Notwithstanding, the Occupying Power may employ such personnel for work permitted by Article 51 of the Fourth Geneva Convention of 1949 on a temporary and occasional basis, provided such work does not interfere with their civil defence duties.

c) Protection of equipment

Equipment exclusively and permanently utilized by the organizations covered by the regulations for their humanitarian activities shall never be intentionally attacked or destroyed, nor shall it be seized or requisitioned.

During an emergency rescue operation, the equipment used for this purpose by the organizations, even though it is not exclusively and permanently earmarked for civil defence purposes, shall not be destroyed or diverted from this use as long as the safety of the population in peril has not been ensured.

Equipment, buildings or stores of these organizations shall not be intentionally destroyed or requisitioned unless the responsible military authorities have taken beforehand all necessary measures for the security of the personnel or the equipment therein.

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Markings

In occupied territory or zones of military operations, personnel belonging to organizations covered by the regulations and permanently assigned to the tasks provided for in the regulations shall wear the civil defence emblem, as designated in the annex. Personnel assigned only temporary to these tasks shall wear the emblem only in the exercise of their function.

Civil defence personnel shall, in addition, carry an identity card furnished by the competent authorities and proving his status as member of the civil defence organization.

## Chapter 5

Complementary and unsolved problems1) Complementary problems

a) The 1967 Advisory Group had also contemplated the principle under which personnel falling into enemy hands should be able to return, provided the way were open, to the area where it was working, in order that the populations there should not be deprived of civil defence - in a similar fashion to the opportunities provided to military medical personnel. Pending such return, civil defence personnel in enemy hands would be treated in accordance with the Fourth Geneva Convention of 1949.

b) The Advisory Group also contemplated laying down stipulations whereby each Government would remain responsible for the activities of civil defence organizations on its territory benefiting from the terms of the regulations and should therefore constantly ascertain that the activities of these organizations remained in conformity with these terms. In addition, each of the Governments concerned would have to notify other States Parties to the regulations any necessary information on the organizations in its country which it desired to benefit from the protection provided for in the regulations.

2) Unsolved questionsa) Markings of civil defence medical services

A problem which retained the attention of the

1964 Conference of experts and of the 1967 Advisory Group concerned the possible extension of the red cross (red crescent, red lion and sun) emblem to the medical services of the civil defence organizations covered by the regulations. Under the proposals made by the ICRC in document VII regarding the extension of the emblem to all civilian medical personnel in general, this difficulty would be now overcome, and the medical services of the organizations concerned above should be among the first to benefit from that extension, precisely because they belong to an organized body which is closely attached to the State.

b) Possibility of exceptionally performing non-humanitarian tasks

Some experts proposed that the personnel of civil defence organizations covered by the regulations should be left the possibility of exceptionally performing tasks which would not be fully humanitarian, while not being those of combatants (repair of roads or lines of communication used by the army - fire-fighting in exclusively military aerodromes, etc.). Owing to the exceptional nature of such tasks, the regulations should, according to the experts, state that they did not deprive the organizations as such of their special protection and that their personnel would only lose its protection while carrying out such activities (it could not during this interval wear the civil defence emblem).

The experts adduced the following arguments in support of this idea :

- in several countries civil defence is already entrusted with such missions and the regulations contemplated should take account of this de facto situation;
- owing to the existence of trained and well-equipped technical civil defence services, these would inevitably find themselves from time to time required to carry out the work referred to above and could not refuse to do so;

- for reasons of economy, many States have a tendency to entrust this type of "para-military" task to civil defence organizations, to avoid setting up additional territorial military units specially assigned to such duties;

- this solution would be all the more acceptable in that it would solely apply to non-occupied territories; in occupied territory, on the contrary, civil defence tasks would be exclusively humanitarian.

Other experts were distinctly opposed to this idea, arguing in particular that :

- the regulations contemplated, being designed to supplement possibly the Geneva Conventions, could not cover and "legalize" non-humanitarian tasks;

- in defining the categories of persons to be protected, the Geneva Conventions did not make this distinction between occupied or non-occupied territory and it would be difficult to establish two different regimes;

- some countries have fully succeeded in entrusting this type of work to military units;

- modern forms of warfare have shown that only personnel performing clearly humanitarian duties had any chance of being respected. Commandos or guerrilleros would probably hardly spare personnel which, they were aware, performed, even though exceptionally, activities ultimately of benefit to the enemy army;

- finally, who would judge that these activities were "exceptional" : would there not be a great risk of abuse ?

Some experts, finally, understanding the reasons argued by both sides, proposed as a compromise that the regulations should state that the activities in question would not be only of an exceptional but also of a temporary nature and that they would not constitute direct support to the armed forces.

c) Cessation of civil defence activities

Some experts proposed that the regulations should state that a civil defence organization could, on the order of its Government, cease to lay claim to the benefit of the regulations and consequently cease to conform to their conditions. In the event of occupation, for example, a Government located outside occupied territory, could order the civil defence organization which had remained in the country to join the resistance movement. The Government in question would notify this to the other parties concerned.

The necessity for such provision was not unanimously countenanced. For some this was an internal matter; the Occupying Power was bound, under the Fourth Geneva Convention, to provide the population of occupied territory with a civil defence service, eventually by means of requisition. On the other hand, civil defence personnel ceasing its activities should not be punishable, as already laid down in Article 54 of the Fourth Geneva Convention.

For other experts, it would be well if the regulations clarified this point, in some manner or other, in the same way as the Advisory Group had considered it useful in other cases to define ideas already implicitly contained in the Fourth Geneva Convention.

d) Special guarantees for only a section of the civil defence services

The Advisory Group's discussions showed that the so-called technical civil defence services, such as civil engineering, fire-fighting, could perform tasks sometimes directly in aid of the civilian population, at others in support of the war effort and even, indirectly, of the army. The granting of special protection to these services, in the spirit of the regulations envisaged, therefore

raises special difficulties. For this reason some experts wondered whether it would not be possible to organize civil defence administratively, in any given country, in such a way that the Government of that country could place under the benefit of the regulations certain services, the duties of which were of a distinctly humanitarian nature, and exclude from the regulations those it desired to assign also to para-military or directly military tasks. Other experts, however, while recognizing that every channel through which a unanimous solution could be reached should be explored, believed that, from the point of view of administration, it would be difficult to bring about such an organization.

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D. TEXTS OF THE ICRC

## Annex XVII \*

Hospital and safety zones.  
(Publication of the ICRC, Geneva, 1951). 042

## Annex XVIII

Hospital and safety zones.  
Suggested planning in peacetime.  
Circular No. 398 of the ICRC. 043

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Rules for the Limitation of the Dangers  
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The Red Cross and Chemical and  
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Article published in the Review of the  
International Red Cross, 52nd year,  
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N.B. The documents marked \* are not attached hereto but may be obtained from the ICRC.

A. INTERNATIONAL CONVENTIONS

ANNEX I

DECLARATION OF ST. PETERSBURG

OF 1868

to the Effect of Prohibiting the Use  
of certain Projectiles in Wartime,

signed at St. Petersburg  
November 29 - December 11, 1868.

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On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that Commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows :

Considering :

That the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would therefore, be contrary to the laws of humanity;

The contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg by sending Delegates thereto, to accede to the present engagement.

This engagement is compulsory only upon the Contracting or Acceding Parties thereto in case of war between two or more of themselves; it is not applicable to non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be compulsory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg, the twenty-ninth of November - eleven day of December one thousand eight hundred and sixty-eight.

ANNEX II

THE HAGUE CONVENTIONS OF 1899

Annex to the 2nd Convention

Section 2, Chapter I, Art. 22-28

(These articles may be found in  
Annex III)

## ANNEX III

ANNEX TO THE HAGUE CONVENTION  
OF OCTOBER 18, 1907  
REGULATIONS CONCERNING THE LAWS  
AND CUSTOMS OF WAR ON LAND  
(extracts)

**The Qualifications of Belligerents**

## ARTICLE I

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions :

- (1) To be commanded by a person responsible for his subordinates ;
- (2) To have a fixed distinctive emblem recognizable at a distance ;
- (3) To carry arms openly ; and
- (4) To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination " army ".

## ARTICLE 2

The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

## ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

**Means of Injuring the Enemy ; Sieges and Bombardments**

## ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

## ARTICLE 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden :

- (a) To employ poison or poisoned weapons.
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army.
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion.

- (*d*) To declare that no quarter will be given.
- (*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering.
- (*f*) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention.
- (*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.
- (*h*) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

#### ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

#### ARTICLE 25

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

#### ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

#### ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

#### ARTICLE 28

The pillage of a town or place, even when taken by assault, is prohibited.

ANNEX IV

INTERNATIONAL PEACE CONFERENCE  
THE HAGUE, 1907

IX

CONVENTION RESPECTING BOMBARDMENTS  
BY NAVAL FORCES IN TIME OF WAR  
(extracts)

CHAPTER I

THE BOMBARDMENT OF UNDEFENDED PORTS,  
TOWNS, VILLAGES, DWELLINGS, OR  
BUILDINGS

Article 1. The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbor.

Art. 2. Military works, military or naval establishments, depôts of arms of war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

Art. 3. After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

These requisitions shall be in proportion to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

## ANNEX V

GENEVA PROTOCOL OF JUNE 17, 1925

FOR THE PROHIBITION OF THE USE IN WAR

OF ASPHYXIATING, POISONOUS OR OTHER

GASES AND OF BACTERIOLOGICAL METHODS

OF WARFARE

The undersigned Plenipotentiaries, in the name of their respective Governments:

Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilised world; and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

Declare:

That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration.

The High Contracting Parties will exert every effort to induce other States to accede to the present Protocol. Such accession will be notified to the Government of the French Republic, and by the latter to all

signatory and acceding Powers, and will take effect on the date of the notification by the Government of the French Republic.

The present Protocol, of which the French and English texts are both authentic, shall be ratified as soon as possible. It shall bear to-day's date.

The ratifications of the present Protocol shall be addressed to the Government of the French Republic, which will at once notify the deposit of such ratification to each of the signatory and acceding Powers.

The instruments of ratification of and accession to the present Protocol will remain deposited in the archives of the Government of the French Republic.

The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and, from that moment, each Power will be bound as regards other Powers which have already deposited their ratifications.

## ANNEX VI

**Convention on the Prevention and Punishment  
of the Crime of Genocide**

**Approved and proposed for signature and ratification or  
accession by General Assembly resolution 260 A (III)  
of 9 December 1948**

*Entry into force:* 12 January 1951, in accordance with  
article 13.

*The Contracting Parties,*

*Having considered* the declaration made by the  
General Assembly of the United Nations in its reso-  
lution 96 (I) dated 11 December 1946 that genocide is  
a crime under international law, contrary to the spirit  
and aims of the United Nations and condemned by the  
civilized world,

*Recognizing* that at all periods of history genocide  
has inflicted great losses on humanity, and

*Being convinced* that, in order to liberate mankind  
from such an odious scourge, international co-operation  
is required,

*Hereby agree as hereinafter provided.*

## ARTICLE I

The Contracting Parties confirm that genocide,  
whether committed in time of peace or in time of war,  
is a crime under international law which they undertake  
to prevent and to punish.

## ARTICLE II

In the present Convention, genocide means any of  
the following acts committed with intent to destroy, in  
whole or in part, a national, ethnical, racial or religious  
group, as such :

- (a) Killing members of the group ;
- (b) Causing serious bodily or mental harm to mem-  
bers of the group ;
- (c) Deliberately inflicting on the group conditions of  
life calculated to bring about its physical destruction in  
whole or in part ;
- (d) Imposing measures intended to prevent births  
within the group ;
- (e) Forcibly transferring children of the group to  
another group.

**ARTICLE III**

The following acts shall be punishable :

- (a) Genocide ;
- (b) Conspiracy to commit genocide ;
- (c) Direct and public incitement to commit genocide ;
- (d) Attempt to commit genocide ;
- (e) Complicity in genocide.

**ARTICLE IV**

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

**ARTICLE V**

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

**ARTICLE VI**

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

**ARTICLE VII**

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

**ARTICLE VIII**

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

## ARTICLE IX

Disputes between the Contracting Parties relating to the interpretations, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

## ARTICLE X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

## ARTICLE XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

## ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

## ARTICLE XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

## ARTICLE XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

#### ARTICLE XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

#### ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

#### ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following :

(a) Signatures, ratifications and accessions received in accordance with article XI ;

(b) Notifications received in accordance with article XII ;

(c) The date upon which the present Convention comes into force in accordance with article XIII ;

(d) Denunciations received in accordance with article XIV ;

(e) The abrogation of the Convention in accordance with article XV ;

(f) Notifications received in accordance with article XVI.

#### ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in article XI.

#### ARTICLE XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

## ANNEX VII

GENEVA CONVENTION RELATIVE TO THE  
PROTECTION OF CIVILIAN PERSONS IN  
TIME OF WAR OF AUGUST 12, 1949.

(extracts)

## ARTICLE 3

Conflicts not of an international character

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons :

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;
- (b) taking of hostages ;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment ;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

## PART II

GENERAL PROTECTION OF POPULATIONS  
AGAINST CERTAIN CONSEQUENCES OF WAR

## ARTICLE 13

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Field of  
application  
of Part II

## ARTICLE 14

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Hospital and  
safety zones  
and localities

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

## ARTICLE 15

Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction :

Neutralized  
zones

- (a) wounded and sick combatants or non-combatants ;
- (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

## ARTICLE 16

- Wounded and sick  
I. General protection
- The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect. As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

## ARTICLE 17

- II. Evacuation
- The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

## ARTICLE 18

- III. Protection of hospitals
- Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

## ARTICLE 19

- IV. Discontinuance of protection of hospitals
- The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

## ARTICLE 20

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.

V.  
Hospital  
staff

In occupied territory and in zones of military operations, the above personnel shall be recognisable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

## ARTICLE 21

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

VI.  
Land and sea  
transport

## ARTICLE 22

Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned.

VII.  
Air transport

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Unless agreed otherwise, flights over enemy or enemy occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

## ARTICLE 23

Consignment  
of medical  
supplies, food  
and clothing.

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing :

- (a) that the consignments may be diverted from their destination,
- (b) that the control may not be effective, or
- (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

## ARTICLE 24

Measures  
relating to  
child welfare

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

## ARTICLE 25

Family news

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfilment of their obligations under the best possible conditions, in particular with the cooperation of the National Red Cross (Red Crescent, Red Lion and Sun) Societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms despatched to one each month.

#### ARTICLE 26

Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organisations engaged on this task provided they are acceptable to it and conform to its security regulations.

Dispersed  
families

### PART III

#### STATUS AND TREATMENT OF PROTECTED PERSONS

##### SECTION I

##### PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES

#### ARTICLE 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Treatment  
I.  
General  
observations

## ARTICLE 28

II.           The presence of a protected person may not be used to render certain points or areas immune from military operations.

Danger zones

## ARTICLE 29

III.           The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

Responsibilities

## ARTICLE 30

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

Application to Protecting Powers and relief organizations

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

## ARTICLE 31

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Prohibition of coercion

## ARTICLE 32

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Prohibition of corporal punishment, torture, etc.

## ARTICLE 33

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Individual responsibility, collective penalties, pillage, reprisals

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

## ARTICLE 34

The taking of hostages is prohibited.

Hostages

## SECTION III

## OCCUPIED TERRITORIES

## ARTICLE 63

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power :

National Red  
Cross and other  
relief societies

- (a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions ;
- (b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

## ANNEX VIII

CONVENTION FOR THE PROTECTION OF  
CULTURAL PROPERTY IN THE EVENT  
OF ARMED CONFLICT

The Hague, 1954

(extracts)

## ARTICLE 4

## RESPECT FOR CULTURAL PROPERTY

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.

2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

4. They shall refrain from any act directed by way of reprisals against cultural property.

5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

## ARTICLE 7

## MILITARY MEASURES

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.

2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

## CHAPTER II

## SPECIAL PROTECTION

## ARTICLE 8

## GRANTING OF SPECIAL PROTECTION

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centres containing monuments and other immovable cultural property of very great importance, provided that they:

(a) are situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication;

(b) are not used for military purposes.

2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A centre containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the centre.

4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially

empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be use for military purposes.

5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic therefrom. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the "International Register of Cultural Property under Special Protection". This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

#### ARTICLE 9

##### IMMUNITY OF CULTURAL PROPERTY UNDER SPECIAL PROTECTION

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes.

#### ARTICLE 10

##### IDENTIFICATION AND CONTROL

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.

**ARTICLE 11****WITHDRAWAL OF IMMUNITY**

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.

2. Apart from the case provided for in paragraph 1 of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.

3. The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons.

B. RESOLUTIONS ADOPTED BY  
THE UNITED NATIONS

ANNEX IX

A/Res/2444 (XXIII)  
13th of January 1969

RESPECT OF HUMAN RIGHTS  
IN ARMED CONFLICTS

(see document VIII)

## ANNEX X

A/RES/2603 (XXIV)  
21 January 1970

QUESTION OF CHEMICAL AND  
BACTERIOLOGICAL (BIOLOGICAL)  
WEAPONS

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The General Assembly,

A

Considering that chemical and biological methods of warfare have always been viewed with horror and been justly condemned by the international community,

Considering that these methods of warfare are inherently reprehensible because their effects are often uncontrollable and unpredictable and may be injurious without distinction to combatants and non-combatants, and because any use would entail a serious risk of escalation,

Recalling that successive international instruments have prohibited or sought to prevent the use of such methods of warfare,

Noting specifically in this regard that :

- a) The majority of States then in existence adhered to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 1)
- b) Since then, further States have become Parties to that Protocol,
- c) Still other States have declared that they will abide by its principles and objectives,
- d) These principles and objectives have commanded broad respect in the practice of States,

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1) League of Nations, Treaty Series, vol. XCIV (1929), No. 2138.

- e) The General Assembly, without any dissenting vote, has called for the strict observance by all States of the principles and objectives of the Geneva Protocol,<sup>1)</sup>

Recognizing therefore, in the light of all the above circumstances, that the Geneva Protocol embodies the generally recognized rules of international law prohibiting the use in international armed conflicts of all biological and chemical methods of warfare, regardless of any technical developments,

Mindful of the report of the Secretary-General, prepared with the assistance of the Group of Consultant Experts, appointed by him under General Assembly resolution 2454 A (XXIII) of 20 December 1968, and entitled Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use,<sup>2)</sup>

Considering that this report and the foreword to it by the Secretary-General add further urgency for an affirmation of these rules and for dispelling, for the future, any uncertainty as to their scope and, by such affirmation, to assure the effectiveness of the rules and to enable all States to demonstrate their determination to comply with them,

Declares as contrary to the generally recognized rules of international law, as embodied in the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, the use in international armed conflict of :

- a) Any chemical agents of warfare - chemical substances, whether gaseous, liquid or solid - which might be employed because of their direct toxic effects on man, animals or plants;
- b) Any biological agents of warfare - living organisms, whatever their nature, or infective material derived from them - which are intended to cause disease or death in man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked.

1836th plenary meeting,  
16 December 1969.

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1) Resolution 2162 B (XXI) of 5 December 1966.

2) United Nations publication, Sale No. : E.69.I.24.

Adopted on December 16, 1969, by 120 votes in favour, none against and 1 abstention.

## B

The General Assembly,

Recalling its resolution 2454 A (XXIII) of 20 December 1968,

Having considered the report of the Secretary-General, entitled Chemical and Bacteriological (Biological) Weapons and the effects of Their Possible Use, 3/

Noting the conclusions of the report of the Secretary-General and the recommendations contained in the foreword to the report,

Noting also the discussion of the report of the Secretary-General at the Conference of the Committee on Disarmament and during the twenty-fourth session of the General Assembly,

Mindful of the conclusion of the report that the prospects for general and complete disarmament under effective international control and hence for peace throughout the world would brighten significantly if the development, production and stockpiling of chemical and bacteriological (biological) agents intended for purposes of war were to end and if they were eliminated from all military arsenals,

Recognizing the importance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 4/

Conscious of the need to maintain inviolate the Geneva Protocol and to ensure its universal applicability,

Emphasizing the urgency of the need for achieving the earliest elimination of chemical and bacteriological (biological) weapons,

## I

1. Reaffirms its resolution 2162 B(XXI) of 5 December 1966 and calls anew for strict observance by all States of

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3/ Ibid.

4/ League of Nations, Treaty Series, Vol. XCIV (1929), No. 2138.

the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925;

2. Invites all States which have not yet done so to accede to or ratify the Geneva Protocol in the course of 1970 in commemoration of the forty-fifth anniversary of its signing and the twenty-fifth anniversary of the United Nations;

## II

1. Welcomes the report of the Secretary-General as an authoritative statement on chemical and bacteriological (biological) weapons and the effects of their possible use, and expresses its appreciation to the Secretary-General and to the consultant experts who assisted him;
2. Requests the Secretary-General to publicize the report in as many languages as is considered desirable and practicable, making use of the facilities of the United Nations Office of Public Information;
3. Recommends to all Governments the wide distribution of the report so as to acquaint public opinion with its contents, and invites the specialized agencies, inter-governmental organizations and national and international non-governmental organizations to use their facilities to make the report widely known;
4. Recommends the report of the Secretary-General to the Conference of the Committee on Disarmament as a basis for its further consideration of the elimination of chemical and bacteriological (biological) weapons;

## III

1. Takes note of the draft Convention on the Prohibition of the Development, Production and Stockpiling of Chemical and Bacteriological (Biological) Weapons and on the Destruction of such Weapons submitted to the General Assembly by the delegations of Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Mongolia, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics <sup>1)</sup> and of the draft Convention for the

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1) See A/7655.

Prohibition of Biological Methods of Warfare submitted to the Conference of the Committee on Disarmament by the United Kingdom of Great Britain and Northern Ireland,<sup>1)</sup> as well as other proposals;

2. Requests the Conference of the Committee on Disarmament to give urgent consideration to reaching agreement on the prohibitions and other measures referred to in the draft conventions mentioned in paragraph 1 above and other relevant proposals;
3. Requests the Conference of the Committee on Disarmament to submit a report on progress on all aspects of the problem of the elimination of chemical and bacteriological (biological) weapons to the General Assembly at its twenty-fifth session;
4. Requests the Secretary-General to transmit to the Conference of the Committee on Disarmament all documents and records of the First Committee relating to questions connected with the problem of chemical and bacteriological (biological) weapons.

1836th plenary meeting,  
16 December 1969.

Vote : 80 votes in favour  
3 votes against  
36 abstentions.

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1) See A/7741, annex C, document ENDC/255/rev.1.

## ANNEX XI

GENERAL ASSEMBLY RESOLUTIONS  
TWENTY-FIFTH REGULAR SESSION

SUBJECT: BASIC PRINCIPLES FOR THE PROTECTION OF CIVILIAN  
POPULATIONS IN ARMED CONFLICTS.

DATE AND MEETING: 9 December 1970, 1922nd plenary meeting

VOTE: 109 in favour, none against, with 8 abstentions

## DOCUMENT NUMBERS

REPORT TO ASSEMBLY: Third Committee report A/8178

RESOLUTION ADOPTED: 2675 (XXV)

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The General Assembly,

Noting that in the present century the international community has accepted an increased role and new responsibilities for the alleviation of human suffering in any form and in particular during armed conflicts,

Recalling that to this end a series of international instruments have been adopted, including the four Geneva Conventions of 1949, (1)

Recalling further its resolution 2444 (XXIII) of 19 December 1968 on respect for human rights in armed conflicts,

Bearing in mind the need for measures to ensure the better protection of human rights in armed conflicts of all types,

Noting with appreciation the work that is being undertaken in this respect by the International Committee of the Red Cross,

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(1) United Nations, Treaty Series, vol. 75, (1950), Nos. 970-973.

Noting with appreciation the reports of the Secretary-General on respect for human rights in armed conflicts, (2)

Convinced that civilian populations are in special need of increased protection in time of armed conflicts,

Recognizing the importance of the strict application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, (3)

Affirms the following basic principles for the protection of civilian populations in armed conflicts, without prejudice to their future elaboration within the framework of progressive development of the international law of armed conflict:

1. Fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict.

2. In the conduct of military operations during armed conflicts, a distinction must be made at all times between persons actively taking part in the hostilities and civilian populations.

3. In the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war, and all necessary precautions should be taken to avoid injury, loss or damage to the civilian populations.

4. Civilian populations as such should not be the object of military operations.

5. Dwellings and other installations that are used only by civilian populations should not be the object of military operations.

6. Places or areas designated for the sole protection of civilians, such as hospital zones or similar refuges, should not be the object of military operations.

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(2) A/7720, A/8052.

(3) United Nations, Treaty Series, vol. 75 (1950), No.973.

7. Civilian populations, or individual members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity.

8. The provision of international relief to civilian populations is in conformity with the humanitarian principles of the Charter of the United Nations, the Universal Declaration of Human Rights and other international instruments in the field of human rights. The Declaration of principles for international humanitarian relief, as laid down in resolution XXVI, adopted by the twenty-first International Conference of the Red Cross, shall apply in situations of armed conflict, and all parties to a conflict should make every effort to facilitate this application.

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\*

C. RESOLUTIONS ADOPTED

BY INTERNATIONAL CONFERENCES

OF THE RED CROSS

## ANNEX XII

XXth INTERNATIONAL CONFERENCE  
OF THE RED CROSS  
VIENNA, OCTOBER 1965

## RESOLUTION XXVIII

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**Protection of Civilian Populations  
against the Dangers of Indiscriminate Warfare**

The XXth International Conference of the Red Cross,

in its endeavours for the protection of the civilian population, reaffirms Resolution No. XVIII of the XVIIIth International Conference of the Red Cross (Toronto, 1952), which, in consideration of Resolution No. XXIV of the XVIIth International Conference of the Red Cross (Stockholm, 1948) requested Governments to agree, within the framework of general disarmament, to a plan for the international control of atomic energy which would ensure the prohibition of atomic weapons and the use of atomic energy solely for peaceful purposes,

thanks the International Committee of the Red Cross for the initiative taken and the comprehensive work done by it in defining and further developing international humanitarian law in this sphere,

states that indiscriminate warfare constitutes a danger to the civilian population and the future of civilisation,

solemnly declares that all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles :

- that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
- that it is prohibited to launch attacks against the civilian populations as such;
- that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;

— that the general principles of the Law of War apply to nuclear and similar weapons;

expressly invites all Governments who have not yet done so to accede to the Geneva Protocol of 1925 which prohibits the use of asphyxiating, poisonous, or other gases, all analogous liquids, materials or devices, and bacteriological methods of warfare,

urges the ICRC to pursue the development of International Humanitarian Law in accordance with Resolution No. XIII of the XIXth International Conference of the Red Cross, with particular reference to the need for protecting the civilian population against the sufferings caused by indiscriminate warfare,

requests the ICRC to take into consideration all possible means and to take all appropriate steps, including the creation of a committee of experts, with a view to obtaining a rapid and practical solution of this problem,

requests National Societies to intervene with their Governments in order to obtain their collaboration for an early solution of this question and urges all Governments to support the efforts of the International Red Cross in this respect,

requests all National Societies to do all in their power to persuade their Governments to reach fruitful agreements in the field of general disarmament.

## ANNEX XIII

XXth INTERNATIONAL CONFERENCE  
OF THE RED CROSS  
VIENNA, OCTOBER 1965

## RESOLUTION XXIX

**Personnel of Civil Defence Services**

The XXth International Conference of the Red Cross,

referring to Resolution VII adopted by the Council of Delegates (Geneva, 1963),

having taken note of the report submitted by the International Committee of the Red Cross on the "Status of Personnel of Civil Defence Services",

having heard the views expressed during the debates on this report:

1. recognises the necessity of strengthening the protection provided by international law to civil defence bodies;
2. requests the ICRC to continue its work in this field on the basis of the report and comments made at the present Conference and to convene a further meeting of experts.

## ANNEX XIV

XXIst INTERNATIONAL CONFERENCE  
OF THE RED CROSS  
ISTANBUL, SEPTEMBER 1969

## RESOLUTION XIV

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**Weapons of Mass Destruction**

The XXIst International Conference of the Red Cross,

considering that the first and basic aim of the Red Cross is to protect mankind from the terrible suffering caused by armed conflicts,

taking into account the danger threatening mankind in the form of new techniques of warfare, particularly weapons of mass destruction,

confirming the resolutions adopted by the International Conferences of the Red Cross as well as the United Nations General Assembly Resolutions Nos. 2162 (XXI), 2444 (XXIII) and 2454 (XXIII) and the Resolution No. XXIII of the International Conference on Human Rights of 1968,

considering that the adoption of a special agreement on the prohibition of weapons of mass destruction would be an important contribution to the development of international humanitarian law,

requests the United Nations to pursue its efforts in this field,

requests the ICRC to continue to devote great attention to this question, consistent with its work for the reaffirmation and development of humanitarian law and to take every step it deems possible,

renews its appeal to the Governments of States which have not yet done so to accede to the 1925 Geneva Protocol and to comply strictly with its provisions,

urges Governments to conclude as rapidly as possible an agreement banning the production and stock-piling of chemical and bacteriological weapons.

## ANNEX XV

XXIst INTERNATIONAL CONFERENCE  
OF THE RED CROSS  
ISTANBUL, SEPTEMBER 1969

## RESOLUTION XV.

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**Status of Civil Defence Service Personnel**

The XXIst International Conference of the Red Cross,

recalling Resolution No. XXIX adopted by the XXth International Conference of the Red Cross at Vienna in 1965 which recognized the need to strengthen the protection afforded to civil defence services under international law,

having noted the report submitted by the ICRC on the "Status of Civil Defence Service Personnel" which records that, since the XXth International Conference of the Red Cross, the ICRC, with the assistance of experts, has solved a number of problems and thus established a more favourable basis for the solution of problems still unsolved,

stressing that the strengthening of international legal protection for civil defence services comes under the more general attempts which are being made to reaffirm and develop the laws and customs applicable in armed conflicts, requests the ICRC to continue its work in this field and to convene a meeting of governmental and Red Cross experts with a view to submitting to Governments, for approval, regulations supplementing the provisions of the existing humanitarian conventions, in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in time of war of 12 August 1949.

## ANNEX XVI

XXIst INTERNATIONAL CONFERENCE  
OF THE RED CROSS  
ISTANBUL, SEPTEMBER 1969

RESOLUTION XXVI.

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**Declaration of Principles for International Humanitarian Relief  
to the Civilian Population in Disaster Situations**

The XXIst International Conference of the Red Cross,

noting that in the present century the international community has accepted increased responsibility for relief of human suffering in any form,

whereas human suffering in all its manifestations is of deep concern to the conscience of mankind and world opinion requires effective action for the relief of such suffering,

affirming that one of the major purposes of the community of nations as laid down in the Charter of the United Nations is to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian nature,

noting with satisfaction the improvements in the ability of the international community to provide various forms of humanitarian relief as a result of international agreements and through the International Red Cross and other impartial international humanitarian organisations,

recognizing that further steps have to be taken by the international community to ensure prompt and effective relief action to civilian populations in natural or other disaster situations,

adopts the following Declaration of Principles:

1. The fundamental concern of mankind and of the international community in disaster situations is the protection and welfare of the individual and the safeguarding of basic human rights.
2. Relief by impartial international humanitarian organisations for civilian populations in natural or other disaster situations should as far as possible be treated as a humanitarian and non-political matter and should be so organised as to avoid prejudicing sovereign and other legal rights in order that the confidence of the parties to a conflict in the impartiality of such organisations may be preserved.

3. The activities of impartial international humanitarian organisations for the benefit of civilian populations should be coordinated in order to secure prompt action and effective allocation of resources and to avoid duplication of effort.
4. Disaster relief for the benefit of civilian populations is to be provided without discrimination and the offer of such relief by an impartial international humanitarian organisation ought not to be regarded as an unfriendly act.
5. All States are requested to exercise their sovereign and other legal rights so as to facilitate the transit, admission and distribution of relief supplies provided by impartial international humanitarian organisations for the benefit of civilian populations in disaster areas when disaster situations imperil the life and welfare of such populations.
6. All authorities in disaster areas should facilitate disaster relief activities by impartial international humanitarian organisations for the benefit of civilian populations.

D. TEXTS OF THE I.C.R.C.

ANNEX XVII \*

"HOSPITAL AND SAFETY ZONES"

(Publication of the I.C.R.C.,  
Geneva, 1951)

## ANNEX XVIII

Circular No. 398HOSPITAL AND SAFETY ZONES  
Suggested planning in peacetime

Geneva, March 20, 1952.

To the Central Committees of the National Societies  
of the Red Cross, Red Crescent, and Red Lion and Sun

Dear Sirs,

Under Article 14 <sup>1)</sup> of the Fourth Geneva Convention relative to the Protection to Civilian Persons in Time of War, of August 12, 1949, States are allowed to set up hospital and safety zones in their territory in order to protect from the effects of war certain categories of persons who have to be specially looked after : the sick, children, aged persons, and so on. In this way, the Convention provides a human method, the importance of which could not be over-estimated, for dealing to some extent with the grave problem of civilian protection.

The Vith Inter-American Red Cross Conference, which met at Mexico in October, 1951, underlined the urgency of considering the creation of such zones in its Xth Resolution, and recommended the National Red Cross Societies to get in touch on the subject with their Governments.

The recognition of safety zones by the adverse Party, which alone guarantees their immunity in law, is brought about by an agreement entered into by the interested States; Annex 1 to the Convention is a Draft Agreement which they may take as a model.<sup>2)</sup>

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1) The text of this Article is given in annex.

2) The Draft is reproduced in the attaches enclosures.

Such Agreement, on which depends recognition of the zones, cannot be concluded before a conflict actually begins, but the zones themselves may be set up in peacetime.

It would seem highly desirable that preparations should be made in peacetime for setting up safety zones : it is not during the first days of a war, when the administration is overwhelmed with other work, that a solution should be sought for the many problems raised by the organization, administration and supply of a zone, and the conditions of admission to it. The zones could no doubt be employed in peacetime as holiday centres, camps for those left homeless by disasters, and so on.

There is a preliminary stage of preparation which should now be undertaken in every country, namely, the investigation from which plans can be drawn up which will be ready for application whenever it is decided to actually establish safety zones. Only such investigation can ensure that the zones will be set up under the most favourable conditions, and it alone will show how far they are feasible in each country. The investigation can be carried out independently of the executive measures which would be required, and at little cost.

Article 14 of the Fourth Convention invites the International Committee of the Red Cross to lend its good offices in order to facilitate the institution of safety zones. It was in this spirit, and in the hope of speeding up matters, that the International Committee thought well to draw up the headings for a working plan, and these it now refers to the National Societies. This is a sphere in which the Societies could no doubt usefully assist their own governmental authorities. 1)

The Committee is of course at the disposal of the National Societies for any assistance or advice they may require; on the other hand, if the Societies would be good enough to let it have the results of their investigations, the Committee could pass the information on and thus allow all Societies to have the benefit of what had been learned.

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1) In certain countries there are various groups whose object is to study and set up safety zones. The Association Internationale des Lieux de Genève with which the International Committee maintains contact, tries to guide these different groups and gives them its support.

The scheme set out below is based on the principles contained in the Draft Agreement annexed to the Fourth Convention. 1) Although the Draft is not binding, and the interested States may have to modify it, it still remains that it was drawn up with care and later adopted by the 1949 Diplomatic Conference. There can thus be no doubt of its value. It is desirable that in creating zones, the rules which to some extent have already received the approval in principle of the adverse Party should be followed. They would most likely be accepted also in actual fact; zones set up on different principles might be recognized only with very considerable difficulty.

For the International Committee  
of the Red Cross

Leopold Boissier	Paul Ruegger
Vice-President	President

President of the Legal Commission

#### SUGGESTED SCHEME

1. Determine where hospital and safety zones or localities could be set up in each country which would conform, so far as possible, to the following conditions:
  - a) be far removed and free from all military objectives, or large industrial or administrative establishments;
  - b) not be situated in areas which are very likely to have an importance from the point of view of national defence;
  - c) not have lines of communication (rail, road, or water) which would have to be used by the armed forces;

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1) For further details references may be made to a survey: "Hospital and Safety Zones", published by the Committee in English, French, and Spanish. It includes a commentary on the Draft Agreement.

- d) be thinly populated in relation to the possibilities of accommodation.

Localities are given places, of small area, which would generally contain housing accommodation. They would primarily be watering places and pleasure and health resorts having a large accommodation capacity in the form of hotels, hospitals and so on. 1) Huts might be constructed on the outskirts.

Zones would be much larger and might include one or more localities. The construction of huts in the open country, in mountaneous areas, or beside villages, might also be considered here.

2. Estimate what proportion of the resident population would have to leave the zone because their work has a relation to national defence.
3. Estimate the number of persons who could be given shelter in each zone, including those who could be put up with inhabitants.
4. On the assumption that the rural population, being widespread, would thereby be sufficiently protected, decide what urban centres or areas would have to have part of their population evacuated.
5. In each such centre or area 2), make a census of the following groups :
  - a) children under fifteen
  - b) mothers of children under seven
  - c) expectant mothers
  - d) persons over sixty-five
  - e) the wounded, the sick, and invalids.

- 
- 1) Localities containing many historical monuments or works of art might also be considered.
  - 2) As a first stage, a limited study could be made of a given centre, as, for example, the capital.

6. From the data obtained under items 1) and 5) above, and bearing in mind distance and available transport, decide what groups should be transported to each zone, and in what proportions. 1)

The separation of members of a family - a difficult matter even in wartime - will arise here, and require particular attention. The separation will probably be less distressing in the case of persons already more or less separated from their families such as the sick, those living in homes, school classes and so on.

7. Draw up for each centre, preferably by district, a list of names and addresses of those who would have to be transported.
8. Have, in each centre or district, persons who could look after transport, including arrangements for administration, stewards, feeding, luggage, etc. Designate the responsible authority.
9. Investigate the available transport possibilities - rail, bus, car, ambulance, etc.
10. Have persons in each safety zone who could get the zone ready and organize the accommodation (administration, medical personnel, supply, police, firemen, air-raid wardens). Appoint the responsible authority.
11. Study the evacuation from the zone of the transit population (in hotels) and part of the resident population (see under 2). Make arrangements for them elsewhere.
12. Study the need for constructing huts, providing essential services, approach roads, sewers, shelters, etc. Arrange for marking the zone.
13. See where the necessary material (beds, blankets, utensils etc.) can be found and how transported and installed.

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1) The categories given under 5) represent more than 40% of the total population.

14. Study how the zone can be regularly supplied with drinking water, food, reserves, clothing, pharmaceutical products, fuel, etc.
  15. See how work could be found for at least part of the people given shelter, and how they could be integrated into the economic life of the zone and the country. Organize schools and recreation.
  16. Make provision for the eventuality of having to evacuate the persons given shelter in the zone and of having to reinstal them.
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The annex to the circular, containing Art. 14 of the Fourth Geneva Convention of 1949, and the draft agreement annexed to that Convention, are not reproduced here.

ANNEX XIX

RULES FOR THE LIMITATION OF THE DANGERS  
INCURRED BY THE CIVILIAN POPULATION  
IN TIME OF WAR  
(1956)

Preamble

All nations are deeply convinced that war should be banned as a means of settling disputes between human communities.

However, in view of the need, should hostilities once more break out, of safeguarding the civilian population from the destruction with which it is threatened as a result of technical developments in weapons and methods of warfare,

The limits placed by the requirements of humanity and the safety of the population on the use of armed force are restated and defined in the following rules.

In cases not specifically provided for, the civilian population shall continue to enjoy the protection of the general rule set forth in Article 1, and of the principles of international law.

\* \* \*

Chapter I. - Object and Field of Application

## Article 1

Since the right of Parties to the conflict to adopt means of injuring the enemy is not unlimited, they shall confine their operations to the destruction of his military resources, and leave the civilian population outside the sphere of armed attacks.

This general rule is given detailed expression in the following provisions:

## Article 2

The present rules shall apply:

- (a) In the event of declared war or of any other armed conflict, even if the state of war is not recognized by one of the Parties to the conflict.
- (b) In the event of an armed conflict not of an international character.

## Article 3

The present rules shall apply to acts of violence committed against the adverse Party by force of arms, whether in defence or offence. Such acts shall be referred to hereafter as "attacks".

## Article 4

For the purpose of the present rules, the civilian population consists of all persons not belonging to one or other of the following categories:

- (a) Members of the armed forces, or of their auxiliary or complementary organizations.
- (b) Persons who do not belong to the forces referred to above, but nevertheless take part in the fighting.

### Article 5

The obligations imposed upon the Parties to the conflict in regard to the civilian population, under the present rules, are complementary to those which already devolve expressly upon the Parties by virtue of other rules in international law, deriving in particular from the instruments of Geneva and The Hague.

## Chapter II. - Objectives barred from Attack

### Article 6

Attacks directed against the civilian population, as such, whether with the object of terrorizing it or for any other reason, are prohibited. This prohibition applies both to attacks on individuals and to those directed against groups.

In consequence, it is also forbidden to attack dwellings, installations or means of transport, which are for the exclusive use of, and occupied by, the civilian population.

Nevertheless, should members of the civilian population, Article 11 notwithstanding, be within or in close proximity to a military objective they must accept the risks resulting from an attack directed against that objective.

### Article 7

In order to limit the dangers incurred by the civilian population, attacks may only be directed against military objectives.

Only objectives belonging to the categories of objectives which, in view of their essential characteristics, are generally acknowledged to be of military importance, may be considered as military objectives. Those categories are listed in an annex to the present rules.

However, even if they belong to one of those categories, they cannot be considered as a military objective where their total or partial destruction, in the circumstances ruling at the time, offers no military advantage.

Chapter III. - Precautions in Attacks on Military Objectives

Article 8

The person responsible for ordering or launching an attack shall, first of all:

- (a) make sure that the objective, or objectives, to be attacked are military objectives within the meaning of the present rules, and are duly identified.

When the military advantage to be gained leaves the choice open between several objectives, he is required to select the one, an attack on which involves least danger for the civilian population:

- (b) take into account the loss and destruction which the attack, even if carried out with the precautions prescribed under Article 9, is liable to inflict upon the civilian population.

He is required to refrain from the attack if, after due consideration, it is apparent that the loss and destruction would be disproportionate to the military advantage anticipated:

- (c) whenever the circumstances allow, warn the civilian population in jeopardy, to enable it to take shelter.

Article 9

All possible precautions shall be taken, both in the choice of the weapons and methods to be used, and in the carrying out of an attack, to ensure that no losses or damage are caused to the civilian population in the

vicinity of the objective, or to its dwellings, or that such losses or damage are at least reduced to a minimum.

In particular, in towns and other places with a large civilian population, which are not in the vicinity of military or naval operations, the attack shall be conducted with the greatest degree of precision. It must not cause losses or destruction beyond the immediate surroundings of the objective attacked.

The person responsible for carrying out the attack must abandon or break off the operation if he perceives that the conditions set forth above cannot be respected.

#### Article 10

It is forbidden to attack without distinction, as a single objective, an area including several military objectives at a distance from one another where elements of the civilian population, or dwellings, are situated in between the said military objectives.

#### Article 11

The Parties to the conflict shall, so far as possible, take all necessary steps to protect the civilian population subject to their authority from the dangers to which they would be exposed in an attack - in particular by removing them from the vicinity of military objectives and from threatened areas. However, the rights conferred upon the population in the event of transfer or evacuation under Article 49 of the Fourth Geneva Convention of 12 Aug. 1949 are expressly reserved.

Similarly, the Parties to the conflict shall, so far as possible, avoid the permanent presence of armed forces, military material, mobile military establishments or installations, in towns or other places with a large civilian population.

## Article 12

The Parties to the conflict shall facilitate the work of the civilian bodies exclusively engaged in protecting and assisting the civilian population in case of attack.

They can agree to confer special immunity upon the personnel of those bodies, their equipment and installations, by means of a special emblem.

## Article 13

Parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or near military objectives, with the idea of inducing the enemy to refrain from attacking those objectives.

Chapter IV. - Weapons with Uncontrollable Effects

## Article 14

Without prejudice to the present or future prohibition of certain specific weapons, the use is prohibited of weapons whose harmful effects - resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents - could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population.

This prohibition also applies to delayed-action weapons, the dangerous effects of which are liable to be felt by the civilian population.

## Article 15

If the Parties to the conflict make use of mines, they are bound, without prejudice to the stipulations of the VIIIth Hague Convention of 1907, to chart the mine-fields. The charts shall be handed over, at the

close of active hostilities, to the adverse Party, and also to all other authorities responsible for the safety of the population.

Without prejudice to the precautions specified under Article 9, weapons capable of causing serious damage to the civilian population shall, so far as possible, be equipped with a safety device which renders them harmless when they escape from the control of those who employ them.

## Chapter V. - Special Cases

### Article 16

When, on the outbreak or in the course of hostilities, a locality is declared to be an "open town", the adverse Party shall be duly notified. The latter is bound to reply, and if it agrees to recognize the locality in question as an open town, shall cease from all attacks on the said town, and refrain from any military operation the sole object of which is its occupation.

In the absence of any special conditions which may, in any particular case, be agreed upon with the adverse Party, a locality, in order to be declared an "open town", must satisfy the following conditions:

- (a) it must not be defended or contain any armed force;
- (b) it must discontinue all relations with any national or allied armed forces;
- (c) it must stop all activities of a military nature or for a military purpose in those of its installations or industries which might be regarded as military objectives;
- (d) it must stop all military transit through the town.

The adverse Party may make the recognition of the status of "open town" conditional upon verification of the fulfilment of the conditions stipulated above. All attacks shall be suspended during the institution and

operation of the investigatory measures.

The presence in the locality of civil defence services, or of the services responsible for maintaining public order, shall not be considered as contrary to the conditions laid down in Paragraph 2. If the locality is situated in occupied territory, this provision applies also to the military occupation forces essential for the maintenance of public law and order.

When an "open town" passes into other hands, the new authorities are bound, if they cannot maintain its status, to inform the civilian population accordingly.

None of the above provisions shall be interpreted in such a manner as to diminish the protection which the civilian population should enjoy by virtue of the other provisions of the present rules, even when not living in localities recognized as "open towns".

#### Article 17

In order to safeguard the civilian population from the dangers that might result from the destruction of engineering works or installations - such as hydro-electric dams, nuclear power stations or dikes - through the releasing of natural or artificial forces, the States or Parties concerned are invited:

- (a) to agree, in time of peace, on a special procedure to ensure in all circumstances the general immunity of such works where intended essentially for peaceful purposes:
- (b) to agree, in time of war, to confer special immunity, possibly on the basis of the stipulations of Article 16, on works and installations which have not, or no longer have, any connexion with the conduct of military operations

The preceding stipulations shall not, in any way, release the Parties to the conflict from the obligation to take the precautions required by the general provisions of the present rules, under Article 8 to 11 in particular.

Chapter VI. - Application of the Rules

## Article 18

States not involved in the conflict, and also all appropriate organisations, are invited to co-operate, by lending their good offices, in ensuring the observance of the present rules and preventing either of the Parties to the conflict from resorting to measures contrary to those rules.

## Article 19

All States or Parties concerned are under the obligation to search for and bring to trial any person having committed, or ordered to be committed, an infringement of the present rules, unless they prefer to hand the person over for trial to another State or Party concerned with the case.

The accused persons shall be tried only by regular civil or military courts; they shall, in all circumstances, benefit by safeguards of proper trial and defence at least equal to those provided under Articles 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

## Article 20

All States or Parties concerned shall make the terms of the provisions of the present rules known to their armed forces and provide for their application in accordance with the general principles of these rules, not only in the instances specifically envisaged in the rules, but also in unforeseen cases.

ANNEX XIXbis \*

DRAFT RULES COMMENTARY

(Annex XIX)

ANNEX XX

MEMORANDUM

PROTECTION OF CIVILIAN POPULATIONS  
AGAINST THE DANGERS OF  
INDISCRIMINATE WARFARE

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Geneva, May 19, 1967

To the Governments Parties to the 1949 Geneva Conventions for the Protection of War Victims and to the IVth Hague Convention of 1907 concerning the Laws and Customs of War on Land

I

As a result of its humanitarian action in connection with armed conflicts, the International Committee of the Red Cross has become ever increasingly aware of the imperative necessity for nations to renounce force as a means of settling disputes, to agree to reduce armaments and to establish peaceful and confident relations amongst themselves. The Red Cross contributes, within its own sphere of action, by every means available to it, towards these ends.

Until such time as these objectives have been achieved - and so long as the scourge of armed conflicts, even of a limited nature, continues to subsist or to arise - it is, however, of paramount importance that the humanitarian rules destined to safeguard the essential values

of civilisation and to facilitate thereby the re-establishment of peace should be strictly observed in such extreme situations. These rules are laid down, in particular, in the Geneva and Hague Conventions as well as in customary law. The International Committee desires to issue a solemn reminder of this necessity, which has incidentally been recalled by various International Conferences of the Red Cross, at which the Governments were represented.

## II

As a result of technical developments in weapons and warfare, given also the nature of the armed conflicts which have arisen in our times, civilian populations are increasingly exposed to the dangers and consequences of hostilities. The International Committee, which has long been deeply concerned by this grave threat, is certain that it reflects public opinion by calling once again the earnest attention of all Governments to the principles which the XXth International Conference of the Red Cross, at Vienna in 1965, proclaimed in its Resolution No. XXVIII, thereby confirming the prevailing law.

Indeed, in its Resolution - the full text of which is attached hereto - the Conference solemnly declared that:

all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles:

- that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
- that it is prohibited to launch attacks against the civilian populations as such;
- that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;

- that the general principles of the Law of War apply to nuclear and similar weapons.

In order for these principles to be fully operative, the International Committee urgently requests Governments to sanction them and, if need be, to develop them in an adequate instrument of international law. The International Committee is prepared to assist in drawing up such an instrument.

In addition, without awaiting the entry into force of this instrument and the possible achievement of an agreement between the Powers concerned for the formal prohibition of weapons of mass destruction, the International Committee invites the Governments to reaffirm, as of now, through any appropriate official manifestation, such as a resolution of the United Nations General Assembly, the value they attach to the principles cited above. Moreover, these principles could henceforth be referred to in the instructions given to the armed forces.

### III

Another aspect of this problem is also of deep concern for the International Committee and calls for the sympathetic attention of Governments.

The observance of rules destined, in case of armed conflicts, to safeguard essential human values being in the interest of civilisation, it is of vital importance that they be clear and that their application give rise to no controversy. This requirement is, however, by no means entirely satisfied. A large part of the law relating to the conduct of hostilities was codified as long ago as 1907; in addition, the complexity of certain conflicts sometimes places in jeopardy the application of the Geneva Conventions.

No one can remain indifferent to this situation which is detrimental to civilian populations as well as to the other victims of war. The International Committee would

greatly value information on what measures Governments contemplate to remedy this situation and in order to facilitate their study of the problem it has the honour to submit herewith an appropriate note.

For the International Committee  
of the Red Cross

Samuel A. GONARD  
President

Annex

SUMMARY REVIEW OF INTERNATIONAL LAW RULES CONCERNING  
THE PROTECTION OF CIVILIAN POPULATIONS AGAINST THE  
DANGERS OF INDISCRIMINATE WARFARE

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The basic rule is laid down in article 22 of the Regulations concerning the Laws and Customs of War on Land, annexed to the Fourth Hague Convention of October 18, 1907, namely: "the right of belligerents to adopt means of injuring the enemy is not unlimited". From this principle, still valid and confirmed by the XXth International Conference of the Red Cross, the following rules are derived.

1. Limitation for benefit of persons

Whilst combatants are the main force of resistance and the obvious target of military operations, non-combatants shall not be subject to and shall not participate in hostilities. It is therefore a generally accepted rule that belligerents shall refrain from deliberately attacking non-combatants. This immunity to which the civilian population by and large is entitled - provided it does not participate directly in hostilities - has not been clearly defined by international law, but in spite of many examples of blatant disregard for it, it is still one of the main pillars of the law of war.

In 1965 the International Conference of the Red Cross in Vienna formulated (in its Resolution XXVIII) the following requirement as one of the principles affecting civilians during war and to which governments should conform, viz: "... distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible."

A major rule deriving from the general norm quoted above is that bombardments directed against the civilian population as such, especially for the purpose

of terrorising it, are prohibited. This rule is widely accepted in the teachings of qualified writers, in attempts at codification and in judicial decisions; in spite of many violations, it has never been contested. The XXth International Conference of the Red Cross, moreover, did not omit to re-state it.

International law does not define civilian population. Of course, any sections of the population taking part in hostilities could hardly be classified as civilian. The view is general that civilians staying within or in close proximity to military objectives do so at their own risk. But when such people leave objectives which may be attacked and return to their homes they may no longer be subject to attack.

Another rule deriving from the general norm is that belligerents shall take every precaution to reduce to a minimum the damage inflicted on non-combatants during attacks against military objectives.

This latter rule is perhaps less widely admitted than those previously mentioned. However, in an official resolution of September 30, 1938, the League of Nations considered it fundamental and it has been given effect in the instructions which many countries have issued to their air forces.

The precautions to which allusion is made would include, for the attacking side, the careful choice and identification of military objectives, precision in attack, abstention from target-area bombing (unless the area is almost exclusively military), respect for and abstention from attack on civil defence organizations: the adversary being attacked would take the precaution of evacuating the population from the vicinity of military objectives.

As can be seen, the obligation incumbent on the attacking forces to take precautions depends in part on the "passive" precautions taken by the opposite side, or, in other words, the practical steps taken by each belligerent to protect its population from consequences of attacks. What is the extent of such an obligation? In some attempts at drafting regulations it has been suggested that bombing attacks should not be carried out

if there is strong probability of indiscriminate effect causing the population to suffer. The International Committee of the Red Cross, for its part, proposed, in its appeal of March 12, 1940, that belligerents should recognize the general principle that an act of destruction shall not involve harm to the civilian population disproportionate to the importance of the military objective under attack. On a number of occasions, and recently by qualified writers, by experts and by some army manual of the laws and customs of war, this rule has been re-stated.

## 2. Target limitation

In this connection, the accepted rule is that attacks may only be directed against military objectives, i.e. those of which the total or partial destruction would be a distinct military advantage.

There has always been an accepted distinction between the fighting area and the zones behind the lines. This distinction is purely technical in origin, the theatre of operations depending on the ground gained by the advancing troops and the range of weapons. Until the advent of air raids, areas behind the firing lines were in fact immune from hostilities.

This out-dated concept was the basis for the law of conventional warfare, i.e., in the main, articles 25 to 27 of the Regulations annexed to the IVth Hague Convention of 1907. In those articles the word "bombardment" must be construed to mean "shelling"; since that time the aeroplane has made air bombardments possible well behind the lines.

Nowadays, a belligerent's whole territory may be considered a theatre of hostilities. The 1907 rules are still applicable to the fighting area at the front. So far as areas well behind the lines are concerned, they are in part out of date.

Although during the Second World War indiscriminate bombardments wrought widespread havoc, no government has attempted to have the practice recognized as lawful. The contrary has in fact been the case. States

have shown a marked tendency to justify their air bombardments as reprisals against an enemy who first had recourse to this method, or, as in the case of the use of the atomic bomb, as an exceptional measure dictated by overriding considerations, such as the saving of human lives by putting an end to the war quickly.

Our first rule of target limitation is not contained in treaty law, but its validity is founded on many official statements, made particularly during the Second World War and the wars of Korea and Vietnam. It has been evolved progressively by analogy with a provision contained in the IXth Hague Convention of 1907; this authorizes naval shelling of certain important military objectives, even if these are situated in undefended towns. The 1949 Geneva Conventions and the 1954 Hague Convention contain several references to the concept of military objective.

Several documents, such as the draft issued by the Commission of government jurists who met in The Hague (December 1922 - February 1923) and the Draft Rules drawn up in 1956 by the International Committee of the Red Cross, have suggested definitions or lists of military objectives. It is generally admitted that an objective is military only if its complete or partial destruction confers a clear military advantage. It is held, also, that any attacking force, before bombing an objective, shall identify it and ascertain that it is military.

There are buildings which cannot under any circumstances be considered as military objectives; they are given the benefit of special immunity under the Geneva Conventions (I, art. 19, IV, art. 18), the Hague Regulations of 1907 (art. 27), and the 1954 Hague Convention relating to the protection of cultural property (art. 4), namely belligerents will in particular spare charitable, religious, scientific, cultural and artistic establishments as well as historic monuments. In addition, under the Fourth Geneva Convention, belligerents may, by special agreement, set up safety or neutralized zones to shelter the civilian population, particularly the weaker members thereof, in order to provide them, under such agreement, with special protection against the effects of hostilities.

These Conventions stipulate that it is the duty of the authorities to indicate the presence of such buildings and zones by special signs.

Mention must also be made of article 25 of the Regulations annexed to the IVth Hague Convention of 1907, considered for years as one of the fundamentals of the law of war namely: "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited". The subsequent development of air warfare has vitiated this provision so far as areas behind the fighting lines are concerned; it is a provision which has been supplanted by the military objective concept. It is nevertheless still valid for ground fighting. When localities offer no resistance, an enemy who is able to take them without a fight shall, in the interest of the population, abstain from attack and useless destruction.

It has become customary to declare towns "open" if it is not intended to defend them against an enemy who reaches them.

### 3. Limitations on weapons and their use

In this respect the basic rule is article 23 (e) of the Regulations annexed to the IVth Hague Convention of 1907, namely: "It is forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering."

Its characteristic is that its aim is not only to spare non-combatants, but also to avoid any suffering to combatants in excess of what is essential to place an adversary hors de combat. This implies that weapons and methods as described below should not be used. Due to the nature of modern war, this field of law no longer concerns only combatants, but also civilian population.

#### a) Weapons inflicting needless suffering

The Conventions of The Hague and of St. Petersburg prohibit the use of "Poison or poisoned weapons" (Hague Regulations, art. 23, a), "any projectile of a weight below 400 grammes which is either explosive or

charged with fulminating or inflammable substances" (St. Petersburg Declaration, 1868) and so-called "dum-dum" bullets "which expand or flatten in the human body" (Hague Declaration, 1899).

It might well be asked whether such new weapons as napalm and high velocity rockets should not be included in this category. They have not so far been expressly prohibited but they do cause enormous suffering and the general prohibition which forms the sub-heading to this section seems applicable to them.

Mention must also be made of a clause in the St. Petersburg Declaration to the effect that parties thereto reserve the right to come to an understanding whenever a precise proposition shall be drawn up concerning any technological developments in weapons, with a view to maintaining the principles they have established and reconciling the necessities of war to the laws of humanity. It is unfortunate that States have not followed up this suggestion which today is as valid as ever.

b) "Blind" weapons

These weapons not only cause great suffering but do not allow of precision against specific targets or have such widespread effect in time and place as to be uncontrollable. They include, for instance, chemical and bacteriological weapons, floating mines and delayed action bombs, whose insidious effects are such that they preclude relief action.

The Geneva Protocol of June 17, 1925, prohibiting the use in war of asphyxiating, poisonous and other gases and of bacteriological methods of warfare has replaced older prohibitions (the 1899 Hague Convention, the Treaty of Versailles) and shall be considered as the expression of customary law. In an almost unanimous resolution on December 5, 1966 - which affirms that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining the accepted norms of civilisation - the United Nations General Assembly called for strict observance by all States of the principles and objectives of this Protocol, and condemned all actions contrary to those objectives. This very brief Protocol is in the

nature of a Declaration subject to ratification by the Powers and binding them in the event of conflict with any co-signatories. This formula seems to have been well chosen and remarkably successful; only one violation has been recorded. It should be pointed out, however, that almost eighty States are not participants.

Unanimous agreement on the interpretation of this prohibition has not been achieved by qualified writers. The Protocol mentions not only asphyxiating gases but also "others" gases. Does this mean all gases or only those which are a hazard to life and health?

The major problem however has been set by nuclear weapons.

In a resolution adopted on November 24, 1961, the United Nations General Assembly stated that the use of nuclear and thermo-nuclear weapons, which exceed even the field of war and cause uncontrollable suffering and destruction to humanity and civilization, "is contrary to international law and to the laws of humanity". It must be added, however, that this resolution was not adopted unanimously, did not cover the case of reprisals and, what is more, it envisaged at some future date the signing of a Convention on the prohibition of nuclear weapons, and it also requested the United Nations Secretary-General to hold consultations with governments on the possibility of convening a special Conference for that purpose.

Until such a Convention has been drawn up and widely ratified - it is still not yet known when this special Conference will meet - the fact must be faced that qualified writers differ on this question. It is not our aim here to decide this important controversy. We would state merely that the use of atomic energy was unknown. However this does not justify its use: in the implementation of the law of war, as any other law, general principles must apply to cases not previously foreseen. It is in fact these very principles which the present survey reviews, i.e.: no attack on the civilian population per se, distinction between combatants and non-combatants, avoidance of unnecessary suffering, only military objectives to be targets for attack, and even in this latter case, the taking of every precaution to

spare the population.

This view was proclaimed by the XXth International Conference of the Red Cross which met in Vienna in 1965. The Resolution No. XXVIII then adopted postulated certain essential principles of protection for civilian populations and added that "the general principles of the Law of War apply to nuclear and similar weapons". This does not imply that the Conference intended to make any decision on the legitimacy of using such weapons; it merely made it clear that in any event nuclear weapons, like any others, were subject to these general principles until such time as governments came to an understanding on measures for disarmament and control with a view to a complete prohibition of the use of atomic energy in warfare.

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THE RED CROSS AND CHEMICAL AND  
BACTERIOLOGICAL WEAPONS (BIOLOGICAL)

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Article published in the Review of the  
International Red Cross, 52nd year,  
No. 618, June 1970.

E. MISCELLANEOUS

## ANNEX XXII

RULES CONCERNING THE CONTROL  
OF WIRELESS TELEGRAPHY  
IN TIME OF WAR AND AIR WARFARE  
FIXED BY THE COMMISSION OF JURISTS  
INTRUSTED WITH STUDYING AND REPORTING  
ON THIS REVISION OF THE LAWS OF WAR,  
ASSEMBLED AT THE HEAGUE ON DECEMBER 11, 1922

(part II, chapter IV)

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BOMBARDMENT. (1)

Art. 22. Any air bombardment for the purpose of terrorizing the civil population or destroying or damaging private property without military character or injuring non-combattants, is forbidden.

Art. 23. Any air bombardment carried out for the purpose of enforcing requisitions in kind or payments of contributions in ready money, is forbidden.

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(1) N.B. The serious question of air bombardments had already retained the attention of the Powers during the first Peace Conference at The Hague in 1899 (Declaration of July 29, 1899, concerning the prohibition of launching projectiles and explosives from balloons, see page 135) and during the second Peace Conference in 1907 (Declaration of October 18, 1907, prohibiting the discharge of projectiles and explosives from balloons).

Later on, the Disarmament Conference was also going to deal with the problem. The failure of that Conference did not permit to arrive at a satisfactory settlement of the question.

Art. 24. 1. An air bombardment is legitimate only when directed against a military objective, i.e. an objective whereof the total or partial destruction would constitute an obvious military advantage for the belligerent;

2. Such bombardment is legitimate only when directed exclusively against the following objectives : military forces, military works, military establishments or depots, manufacturing plants constituting important and well-known centers for the production of arms, ammunition or characterized military supplies, lines of communication or of transport which are used for military purposes.

3. Any bombardment of cities, towns, villages, habitations and buildings which are not situated in the immediate vicinity of the operations of the land forces, is forbidden. Should the objectives specified in paragraph 2 be so situated that they could not be bombed but that an indiscriminating bombardment of the civil population would result therefrom, the aircraft must abstain from bombing;

4. In the immediate vicinity of the operations of the land forces, the bombardment of cities, towns, villages, habitations and buildings is legitimate, provided there is a reasonable presumption that the military concentration is important enough to justify the bombardment, taking into account the danger to which the civil population will thus be exposed;

5. The belligerent State is bound to pay compensation for damage caused to persons or property, in violation of the provisions of the Article, by any one of his agents or any one of its military forces.

Art. 25. In bombardments by aircraft, all necessary steps should be taken by the commander to spare, as far as possible, buildings dedicated to public worship, art, science and charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are gathered, provided that such buildings, objectives and places are not being used at the same time for military purposes. Such monuments, objects and places must be indicated, during the day, by signs visible from the aircraft. Using such signs to indicate buildings, objects or places other than those hereinbefore specified shall be considered a perfidious act. The signs of which the above mentioned use is to be made, shall be, in the case of buildings protected under

the Geneva Convention, the red cross on a white ground and, in the case of the other protected buildings, a large rectangular panel divided diagonally into two triangles, the one white and the other black.

A belligerent who desires to ensure by night the protection of hospitals and other above mentioned privileged buildings, must take the necessary steps to make their aforesaid special signs sufficiently visible.

## ANNEX XXIII

PRINCIPLES OF INTERNATIONAL LAW  
sanctioned by the Nuremberg Tribunal  
statute and verdict

Excerpt from the Charter of the International Military Tribunal  
(Extract)

(Principles formulated in 1950 by  
the United Nations International Law Commission). (1)

PRINCIPLE VI

a)

b) War crimes :

Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to murder, illtreatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or illtreatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

c) Crimes against humanity :

Namely, murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

(1) The International Law Commission and its work. United Nations. New York. Publication No 67.V.6.

## ANNEX XXIV

**Resolutions adopted by the Institute at the Session  
at Edinburgh (4-13 September 1969)****I. The distinction between military objectives and non-military  
objects in general and particularly the problems associated  
with weapons of mass destruction**

*(Fifth Commission)*

The Institute of International Law,

*Reaffirming* the existing rules of international law whereby the recourse to force is prohibited in international relations.

*Considering* that, if an armed conflict occurs in spite of these rules, the protection of civilian populations is one of the essential obligations of the parties.

*Having in mind* the general principles of international law, the customary rules and the conventions and agreements which clearly restrict the extent to which the parties engaged in a conflict may harm the adversary,

*Having also in mind* that these rules, which are enforced by international and national courts, have been formally confirmed on several occasions by a large number of international organizations and especially by the United Nations Organization,

*Being of the opinion* that these rules have kept their full validity notwithstanding the infringements suffered,

*Having in mind* that the consequences which the indiscriminate conduct of hostilities and particularly the use of nuclear, chemical and bacteriological weapons, may involve for civilian populations and for mankind as a whole,

*Notes* that the following rules form part of the principles to be observed in armed conflicts by any *de jure* or *de facto* government, or by any other authority responsible for the conduct of hostilities:

1. The obligation to respect the distinction between military objectives and non-military objects as well as between persons participating in the hostilities and members of the civilian population remains a fundamental principle of the international law in force.

2. There can be considered as military objectives only those which, by their very nature or purpose or use, make an effective contribution to military action, or exhibit a generally recognized military significance, such that their total or partial destruction in the actual circumstances gives a substantial, specific and immediate military advantage to those who are in a position to destroy them.

3. Neither the civilian population nor any of the objects expressly protected by conventions or agreements can be considered as military objectives, nor yet

(a) under whatsoever circumstances the means indispensable for the survival of the civilian population,

(b) those objects which, by their nature or use, serve primarily humanitarian or peaceful purposes such as religious or cultural needs.

4. Existing international law prohibits all armed attacks on the civilian population as such, as well as on non-military objects, notably dwellings or other buildings sheltering the civilian population, so long as these are not used for military purposes to such an extent as to justify action against them under the rule regarding military objectives as set forth in the second paragraph hereof.

5. The provisions of the preceding paragraphs do not affect the application of the existing rules of international law which prohibit the exposure of civilian populations and of non-military objects to the destructive effects of military means.

6. Existing international law prohibits, irrespective of the type of weapon used, any action whatsoever designed to terrorize the civilian population.

7. Existing international law prohibits the use of all weapons which, by their nature, affect indiscriminately both military objectives and non-military objects, or both armed forces and civilian populations. In particular, it prohibits the use of weapons the destructive effect of which is so great that it cannot be limited to specific military objectives or is otherwise uncontrollable (self-generating weapons), as well as of "blind" weapons.

8. Existing international law prohibits all attacks for whatsoever motive or by whatsoever means for the annihilation of any group, region or urban centre with no possible distinction between armed forces and civilian populations or between military objectives and non-military objects.

(9 September 1969)

## ANNEX XXV

DOCUMENTS RELATIVE TO CERTAINS WEAPONS

## A) PRINCIPAL INSTRUMENTS OF INTERNATIONAL LAW

- Declaration of St. Petersburg of 1868 (to the effect of Prohibiting the Use of certain Projectiles in war-time).
- Regulations respecting the Laws and Customs of War on Land. (Notably articles 22, 23a, 23e) see annexes II and III.
- Geneva Protocol of June 17, 1925, for the Prohibitions of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare. (See annex V).

## B) RESOLUTIONS ADOPTED BY INTERGOVERNMENTAL OR NON-GOVERNMENTAL ORGANIZATIONS AND ASSOCIATIONS :

- United Nations, General Assembly, Resolutions 2162 (XXI), 2444 (XXIII), ( see annex IX), 2454 (XXIII), 2603 (XXV) (see annex X), 2674 and 2677 (XXV)...
- International Red Cross Conferences :

<u>Conference</u>	<u>Place</u>	<u>Date</u>	<u>Resolution</u>
Xe	Geneva	1921	XII
XIIe	Geneva	1925	V
XIIIe	The Hague	1928	V/VI
XIVe	Brussels	1930	V
XVe	Tokyo	1934	(XVIII), XXXVI
XVIIe	Stockholm	1948	XXIV
XVIIIe	Toronto	1952	XVII/XVIII
XIXe	New-Delhi	1957	XVIII
XXe	Vienna	1965	XXVIII
XXIe	Istanbul	1969	XIV (XX)

- World Health Organization : Several Resolutions have been adopted by the World Health Organization, the latest being WHA 2553 of 21 May 1970 adopted by the XXIIIrd World Health Assembly.

- Other Organizations and Associations :

- International Conference on Human Rights, Teheran, (April/May 1968), Resolution XXIII, paragraph 4 :

"The International Conference on Human Rights,  
.....

considering, also that the widespread violence and brutality of our times, including massacres, summary executions, tortures, inhuman treatment of prisoners, killing of civilians in armed conflicts and the use of chemical and biological means of warfare, including napalm bombing, erode human rights and engender counter-brutality."...

- Resolution of the Institute for International Law, Edimbourg session, 1969, article 7 (see Annex XXIV).

- Resolution adopted at a meeting of the special Committee of non-governmental organizations on disarmament, Palais des Nations, Geneva, February 19, 1970:

"The under mentioned Non-Governmental Organizations,

Alarmed at the spread of weapons of mass destruction which constitute an ever increasing menace to the future of mankind;

Concerned at the continued extravagant use of valuable material and intellectual resources for the development and stock-piling of such weapons;.....

Agree to take the following steps:

1. to urge all governments which have not yet done so to ratify or adhere to the Protocol of Geneva of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;
2. to urge all governments to accept the application of the Protocol to all armed conflicts;
3. to use all the means at their disposal to secure the speedy implementation of the three points made by the Secretary General in the forward to his Report."...

## C) IMPORTANT STUDIES :

- Report of the UN Secretary General on Chemical and bacteriological (biological) weapons and the Effects of their possible use (A/7575, 1st of July 1969).
- Report of the World Health Organisation :  
"Health Aspects of Chemical and Biological Weapons"  
published in January 1970.
- Preliminary Report of the "Stockholm International Peace Research Institute" "The Problems of Chemical and Biological Warfare".

## Report of the ICRC :

- Legal protection of the Civilian Population against the dangers of indiscriminate warfare. (June 1963 and March 1965).
- Reaffirmation and development of the Laws and Customs applicable in armed conflicts. (May 1969, part. II, No 3, a) (See also Annex XXI).